रजिस्ट्री सं. डी.एल. (एन) 04/0007/2003—05 REGD. NO. D. L. (N) 04/0007/2003—05

भारत का राजपत्र
The Gazette of India

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सं. 24] नई दिल्ली, जुलाई 5—जुलाई 11, 2020, शनिवार/ आषाढ़ 14—आषाढ़ 20, 1942
No. 24] NEW DELHI, JULY 5—JULY 11, 2020, SATURDAY/ ASADHA 14— ASADHA 20, 1942

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 8 जुलाई, 2020

का.आ. 483.—बैंककारी विनियमन अधिनियम 1949 (1949 का 10) की धारा 53 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केंद्रीय सरकार भारतीय रिजर्व बैंक की अनुशंसा पर एतद्वारा यह घोषणा करती है कि उक्त अधिनियम की धारा 19 की उप-धारा (2) के उपबंध, आईडीएफसी फ़र्स्ट बैंक लिमिटेड पर लागू नहीं होंगे, जहाँ तक इनका संबंध क्रमशः (i) नेउमेक बिल्डर्स प्राइवेट लिमिटेड, (ii) नीरज कक्कड़ कंस्ट्रक्शन्स प्राइवेट लिमिटेड और (iii) मोनोटोना टायर्स लिमिटेड की चुकता पूंजी से तीस प्रतिशत से अनधिक इनकी शेयरधारिता से है।

2. यह छूट शासकीय राजपत्र में अधिसूचना के प्रकाशन की तारीख से पांच वर्ष की अवधि के लिए या इस छूट को समाप्त किए जाने तक, जो भी पहले हो, लागू रहेगी।

[फा. सं. 7/57/2019-बीओए-I]

ए. के. घोष, अवर सचिव

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 8th July, 2020

S.O. 483.—In exercise of the powers conferred by sub-section (1) of section 53 of the Banking Regulation Act, 1949 (10 of 1949), the Central Government on the recommendation of the Reserve Bank of India, hereby declare that the provisions of sub-section (2) of section 19 of the said Act shall not apply to the IDFC First Bank Limited, in so far as they relate to its holding shares in (i) Neumec Builders Private Limited, (ii) Niraj Kakad Constructions Private Limited and (iii) Monotona Tyres Limited, respectively, of an amount, each exceeding thirty percent of the paid-up capital.

2. This exemption shall be in force for a period of five years from the date of publication of the notification in the Official Gazette or till its revocation, whichever is earlier.

[F. No. 7/57/2019-BOA-I]

A. K. GHOSH,Under Secy.

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 6 जुलाई, 2020

का.आ. 484.—केन्द्र सरकार, एतदद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 की अधिनियम संख्या 25) की धारा 5 की उप-धारा (1) सपठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए तमिलनाडु राज्य सरकार, गृह (पुलिस-VIII) विभाग की अधिसूचना जी.ओ. (2डी) सं. 150, गृह (पुलिस-VIII), दिनांक 29.06.2020, सं. II(2)/एचओ/383(सी)/2020, के माध्यम से जारी सहमति से श्री जेयाराज और श्री बेन्निक्स की मृत्यु के संबंध में कोविलपट्टी ईस्ट पुलिस स्टेशन में दण्ड प्रक्रिया संहिता की धारा 176 (1-ए)(I), 1973 (1974 की अधिनियम सं. 2) के तहत वर्तमान में दर्ज दोनों मामले अपराध सं 649/2020 और 650/2020 के संबंध में किए गए अपराध(धों) के अन्वेषण करने के लिए तथा ऐसे अपराध(धों) से जुड़े या उससे संबद्ध किसी दुष्प्रयास, दुष्प्रेरणा और षड्यंत्र एवं/अथवा उसी संव्यवहार में किए गए या उन्हीं तथ्यों से उत्पन्न किसी अन्य अपराध(धों) का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्त तमिलनाडु राज्य में करती है।

[फा. सं. 228/16/2020-एवीडी-II]

एस .पी. आर. त्रिपाठी, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 6th July, 2020

S.O. 484.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (Act No.25 of 1946), the Central Government with the consent of the State Government of Tamil Nadu, issued vide Home (Police-VIII) Department Notification G.O. (2D) No. 150, Home (Police-VIII), dated 29.06.2020, No. II(2)/HO/383(c)/2020, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to whole State of Tamil Nadu for investigation into the offence(s) relating to the cases Crime No. 649/2020 and Crime No. 650/2020, both presently registered under section 176(1-A)(I) of Code of Criminal Procedure, 1973 (Act No. 2 of 1974) in Kovilpatti East Police Station, pertaining to the death of Shri Jeyaraj and Shri Bennicks and any attempt, abetment and conspiracy, in relation to or in connection with such offence(s) and/or for any other offence(s) committed in the course of the same transaction or arising out of the same facts.

[F. No. 228/16/2020-AVD-II]

S. P. R. TRIPATHI, Under Secy.

कोयला मंत्रालय

नई दिल्ली, 10 जुलाई, 2020

का.आ. 485.—कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 9 की उपधारा (1) के अधीन जारी की गई भारत सरकार के कोयला मंत्रालय की अधिसूचना का. आ. संख्यांक 2141, तारीख 10 दिसम्बर, 2019, जो भारत के राजपत्र, भाग II, खंड 3, उप-खंड (ii), तारीख 14 दिसम्बर, 2019 में प्रकाशित की गई थी, उक्त अधिसूचना से संलग्न अनुसूची में वर्णित भूमि और ऐसी भूमि, (जिसे इसमें इसके पश्चात् उक्त भूमि कहा गया है), में या उस पर के सभी अधिकार, उक्त अधिनियम की धारा 10 की उप-धारा (1) के अधीन, सभी विल्लंगमों से मुक्त होकर, आत्यंतिक रूप में केन्द्रीय सरकार में निहित हो गए थे;

और, केन्द्रीय सरकार का यह समाधान हो गया है, कि साउथ ईस्टर्न कोलफील्ड्स लिमिटेड, सीपत रोड, डाकघर संख्या 60, जिला बिलासपुर-495 006, छत्तीसगढ़ (जिसे इसमें इसके पश्चात् सरकारी कंपनी कहा गया है), ऐसे निबंधनों और शर्तों का, जो केन्द्रीय सरकार इस निमित्त अधिरोपित करना उचित समझे, अनुपालन करने के लिए रजामंद है;

अत:, अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 11 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि इस प्रकार निहित भूमि 183.186 हेक्टेयर (लगभग) या 452.65 एकड़ (लगभग) माप वाली उक्त भूमि में या उस पर के सभी अधिकार तारीख 14 दिसम्बर, 2019 से केन्द्रीय सरकार में इस प्रकार निहित बने रहने के बजाए, निम्नलिखित निबंधनों और शर्तों के अधीन रहते हुए, उक्त सरकारी कंपनी में निहित हो जाएंगे, अर्थात् : -

(1) सरकारी कंपनी उक्त अधिनियम के उपबंधों और अन्य सुसंगत विधियों के अधीन यथा अवधारित प्रतिकर, ब्याज, नुकसानियों आदि से संबंधित और वैसी ही मदों की बाबत् सभी संदाय करेगी;

(2) सरकारी कंपनी द्वारा शर्त (1) के अधीन, संदेय रकमों का अवधारण करने के प्रयोजन के लिए उक्त अधिनियम की धारा 14 के अधीन एक अधिकरण का गठन किया जाएगा और उक्त अधिकरण और किसी ऐसे अधिकरण की सहायता करने के लिए नियुक्त व्यक्तियों के संबंध में, उपगत सभी व्यय, उक्त सरकारी कंपनी द्वारा वहन किए जाएंगे और इसी प्रकार, निहित उक्त भूमियों में या उस पर के अधिकारों के लिए या उनके

संबंध में अपील आदि विधिक कार्यवाहियों की बाबत उपगत सभी व्यय भी सरकारी कंपनी द्वारा वहन किए जाएंगे ;

(3) सरकारी कंपनी, केन्द्रीय सरकार या उसके पदधारियों की, ऐसे किसी अन्य व्यय के संबंध में क्षतिपूर्ति करेगी, जो इस प्रकार निहित उक्त भूमि में या उस पर के अधिकारों के बारें में, केन्द्रीय सरकार या उसके पदधारियों द्वारा या उनके विरूद्ध किन्हीं कार्यवाहियों के संबंध में आवश्यक हो ;

(4) सरकारी कंपनी को केन्द्रीय सरकार के पूर्व अनुमोदन के बिना, उक्त भूमि में इस प्रकार निहित अधिकारों को किसी अन्य व्यक्ति को अंतरित करने की शक्ति नहीं होगी ; और

(5) सरकारी कंपनी, ऐसे निदेशों और शर्तों का पालन करेगी, जो केन्द्रीय सरकार द्वारा, जब कभी आवश्यक हो, उक्त भूमि के विशिष्ट क्षेत्रों के लिए दिए जाएं या अधिरोपित किए जाएं।

[फा. सं. 43015/21/2017-एलए एण्ड आईआर]

राम शिरोमणि सरोज, उप सचिव

MINISTRY OF COAL

New Delhi, the 10th July, 2020

S.O. 485.—Whereas on the publication of the notification of the Government of India, Ministry of Coal number S.O. 2141, dated the 10th December, 2019, published in the Gazette of India, Part II, Section 3, Sub-section (ii), dated the 14th December, 2019, issued under sub-section (1) of section 9 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act), the lands and all rights in or over the said land described in the Schedule appended to the said notification (hereinafter referred to as the said land) vested absolutely in the Central Government free from all encumbrances under sub-section (1) of section 10 of the said Act;

And whereas, the Central Government is satisfied that the South Eastern Coalfields Limited, Seepat Road, P. B. No. 60, District-Bilaspur-495006, Chhattisgarh (hereinafter referred to as the Government Company) is willing to comply with such terms and conditions as the Central Government thinks fit to impose in this behalf;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 11 of the said Act, the Central Government hereby directs that the all rights of 183.186 hectares (approximately) or 452.65 acres (approximately) in or over the said lands so vested, shall, with effect from 14th December, 2019 instead of continuing to so vest in the Central Government, vest in the Government Company, subject to the following terms and conditions, namely:-

(1) the Government Company shall make all payments in respect of compensation, interest, damages, etc. and the like, as determined under the provisions of the said Act and other relevant law ;

(2) a Tribunal shall be constituted under section 14 of the said Act, for the purpose of determining the amounts payable by the Government Company under condition (1) and all expenditure incurred in connection with any such Tribunal and persons appointed to assist the Tribunal, shall be borne by the said Government Company and similarly, all expenditure incurred in respect of all legal proceedings like appeals, etc. for or in connection with the rights, in or over the said land, so vested, shall also be borne by the Government Company;

(3) the Government Company shall indemnify the Central Government or its officials against any other expenditure that may be necessary in connection with any proceedings by or against the Central Government or its officials, regarding the rights in or over the said lands so vested;

(4) the Government Company shall have no power to transfer the said lands to any other person without the prior approval of the Central Government; and

(5) the Government Company shall abide by such directions and conditions as may be given or imposed by the Central Government for particular areas of the said lands as and when necessary.

[F. No. 43015/ 21/ 2017-LA & IR]

RAM SHIROMANI SAROJ, Dy. Secy.

Je ,oa jkstxkj eaaky;

नई दिल्ली, 29 जून, 2020

dk- vk- 486.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स बी. बी. एम. बी. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय नंबर–2 चंडीगढ़ के पंचाट (संदर्भ संख्या 119/2005, 120/2005, 122/2005, 131/2005, 146/2005, 162/2005, 195/2005, 210/2005, 229/2005, 239/2005, 250/2005, 258/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.06.2020 को प्राप्त हुआ था।

[सं. एल-23012/30/2004-आईआर (सीएम-2),
सं. एल-23012/41/2004-आईआर (सीएम-2),
सं. एल-23012/25/2004-आईआर (सीएम-2),
सं. एल-23012/44/2004-आईआर (सीएम-2),
सं. एल-23012/77/2004-आईआर (सीएम-2),
सं. एल-23012/74/2004-आईआर (सीएम-2),
सं. एल-23012/67/2004-आईआर (सीएम-2),
सं. एल-23012/62/2004-आईआर (सीएम-2),
सं. एल-23012/9/2004-आईआर (सीएम-2),
सं. एल-23012/8/2004-आईआर (सीएम-2),
सं. एल-23012/59/2004-आईआर (सीएम-2),
सं. एल-23012/16/2004-आईआर (सीएम-2)]

राजेन्द्र सिंह, डेस्क अधिकारी/ अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 29th June, 2020

S. O. 486.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 119/2005, 120/2005, 122/2005, 131/2005, 146/2005, 162/2005, 195/2005, 210/2005, 229/2005, 239/2005, 250/2005, 258/2005) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure, in the industrial dispute between the Management of M/s. B.B.M.B and their workmen, received by the Central Government on 25.06.2020

[No. L-23012/30/2004-IR(CM-II),
No. L-23012/41/2004-IR(CM-II),
No. L-23012/25/2004-IR(CM-II),
No. L-23012/44/2004-IR(CM-II),
No. L-23012/77/2004-IR(CM-II),
No. L-23012/74/2004-IR(CM-II),
No. L-23012/67/2004-IR(CM-II),
No. L-23012/62/2004-IR(CM-II),
No. L-23012/9/2004-IR(CM-II),
No. L-23012/8/2004-IR(CM-II),
No. L-23012/59/2004-IR(CM-II),
No. L-23012/16/2004-IR(CM-II)]

RAJENDER SINGH, Desk Officer/Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

Sl. No.		
1.	ID No.119/2005 title Tek Chand Vs. B.B.M.B., registered on 19.07.2005	Tek Chand S/o Bhikham Ram, R/o Vill Chhater, P.O. Jugham, Teh. Sunder Nagar, Distt. Mandi (H.P.) Ref. No.L-23012/30/2004-IR(CM-II) dated 07.07.2005
2.	ID No.120/2005 title NanakChand Vs. B.B.M.B., registered on 19.07.2005	Nanak Chand S/o Dila Ram, R/o Vill. Chattar, P.O. Jugham, Teh. Sunder Nagar, Distt. Mandi (H.P.) Ref. No. L-23012/41/2004-IR(CM-II) dated 07.07.2005
3.	ID No.122/2005 title Ram Singh Vs. B.B.M.B., registered on 19.07.2005	Ram Singh S/o Parsh Ram, R/o V.P.O. Chirdi, P.O. Jai Devi Teh. Sunder Nagar, Distt. Mandi (H.P.) Ref. No. L-23012/25/2004-IR(CM-II) dated 07.07.2005
4.	ID No.131/2005 title Birender Singh Vs. B.B.M.B., registered on 19.07.2005	Birender Singh S/o Bhikham, R/o Vill. Patta, P.O. Upper Behli, Teh. & Distt. Mandi (H.P.) Ref. No. L-23012/44/2004-IR(CM-II) dated 07.07.2005
5.	ID No.146/2005 title Vidya Sagar Vs. B.B.M.B., registered on 19.07.2005	Vidya Sagar S/o Hakam Chand, R/o S-O/777, BBMB Colony, Sunder Nagar, Distt. Mandi (H.P.) Ref. No.L-23012/77/2004-IR(CM-II) dated 07.07.2005
6.	ID No.162/2005 title Bhikham Vs. B.B.M.B., registered on 19.07.2005	Bhikham S/o Balak Ram, R/o Vill. Khandla, P.O. Kummi, Teh. Balh, Distt. Mandi (H.P.) Ref. No.L-23012/74/2004-IR(CM-II) dated 07.07.2005
7.	ID No.195/2005 title Sant Ram Vs. B.B.M.B., registered on 02.08.2005	Sant Ram S/o Thoba, R/o Vill. Sangi, P.O. Jai Devi, Teh. Sunder Nagar, Distt. Mandi (H.P.) Ref. No.L-23012/67/2004-IR(CM-II) dated 07.07.2005
8.	ID No. 210/2005 title Khem Chand Vs. B.B.M.B., registered on 03.08.2005	Khem Chand S/o Bashkhu Ram, R/o Vill. Mudali, P.O. Rajli, Teh. Sunder Nagar, Distt. Mandi (H.P.) Ref. No.L-23012/62/2004-IR(CM-II) dated 07.07.2005
9.	ID No.229/2005 title Roshan Lal Vs. B.B.M.B., registered on 05.08.2005	Roshan Lal S/o Mehar Chand, R/o VPO Mahader, Teh. Sunder Nagar, Distt. Mandi (H.P.) Ref. No.L-23012/9/2004-IR(CM-II) dated 07.07.2005
10.	ID No.239/2005 title Jagat Ram Vs. B.B.M.B., registered on 05.08.2005	Jagat Ram S/o Rohli Ram, R/o Vill. Bohdhle, P.O. Jai Devi, Teh. Sunder Nagar, Distt. Mandi (H.P.) Ref. No.L-23012/8/2004-IR(CM-II) dated 07.07.2005
11.	ID No.250/2005 title Lachman Vs. B.B.M.B., registered on 09.08.2005	Lachman S/o Ishriya, R/o Vill. Kharnda, P.O. Sihli, Teh. Sunder Nagar, Distt. Mandi (H.P.) Ref. No.L-23012/59/2004-IR(CM-II) dated 07.07.2005
12.	ID No.258/2005 title Kundan lal Vs. B.B.M.B., registered on 10.08.2005	Kundan Lal S/o Chuda Ram, R/o VPO Jai Devi, Teh. Sunder Nagar, Distt. Mandi (H.P.) Ref. No. L-23012/16/2004-IR(CM-II) dated 07.07.2005

...Workmen

Versus

1. Bhakra Beas Management Board, Madhya Marg, Sector 19-B, Chandigarh, through its chairman.

2. Chief Engineer, BSL-Project Sundernagar Township, District Mandi.

...Respondents/Managements

AWARD
Passed on:- 05.05.2020

Central Government vide Notifications (mentioned above), under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial disputes separately for each workmen(name mentioned) related to the Department of Bhakra Beas Management Board for adjudication to this Tribunal, reference read as follows:-

"Whether the demand of Sh. Tek Chand (and 11 others) for reinstatement in the services of BBMB, Sunder Nagar is legal and justified? If so, to what relief the concerned workman is entitled to and from which date?"

1. The facts and laws involved in all these cases are common hence, these cases are decided on the request of both the parties by a common judgment, making leading case titled as Tek Chand Vs. B.B.M.B, bearing ID No.119/2005.

2. Brief facts, mentioned in the cases, are that the construction of BSL(P) started in the year 1962 under Beas Construction Board, which is constituted on 10.02.1961 from Sundernagar and sub-offices at Pandoh, Bagi and Salapar, Distt. Mandi H.P. and this project was under the ownership of Center Government, who had been constructing, maintaining, operating and administrating it through various Boards i.e. Beas Construction Board, Beas Control Boards and BBMB. The workman was employed by the employer in Beas Project (Unit-1) in pursuance of proviso (1) of Section 80(3) by appointment under Section 80(3) and taking over under Section 80(5) of Punjab Re-organisation Act and the workmen becomes the employees of the Center Government under the management of B.B.M.B. from 15.05.1976. All the workmen have completed 240 days in every calendar year and they were not interrupted till their retrenchment. The employer made a bulk retrenchment of project employees in the year 1977 and 1978 and also in stages thereafter till 1984. The workmen were also retrenched by the employer on account of reduction in strength due to part completion of the Beas Satluj Link Project and re-employment certificate is issued in the office of re-settlement B.S.L.B.B.M.B. Sundernagar for the re-employment of the retrenched workmen of B.S.L. in accordance with provision of I.D. Act, 1947. After the retrenchment of the workmen, thousands of other persons were appointed secretly by employer, violating Section 25-G and Section 25-H of the I.D. Act, 1947. The employer is also doing unfair labour practices as defined in Section 2(R)A of the ID Act. By filling vacant posts, the employer declared some posts as surplus and retrenched the employees working on those posts. The appointments made by the employer from 1977-78 therefrom based on favourism and nepotism and were arbitrary violate of Article 14 and 16 of Constitution of India. It is therefore, prayed that the claim petition of the workmen may kindly be allowed along with other benefits.

3. Respondent/management filed its written statement, alleging therein that the construction of Beas Project was undertaken by the Punjab Government, Irrigation Department prioir to the re-organisation of the erstwhile State of Punjab on 01.01.1996. The workmen were employed by BCB and retrenched by the BCB. There is no master and servant relation between the management and workmen as they were not employed by the BBMB. The 1093 workcharged and 12 contingent paid employees of Beas Project(Power Wingh) were sent on job order basis to Ranjit Sagar Dam, Punjab and were taken over in the BBMB under the benevolent policy of the Central Government which had issued directions to the BBMB to absorbed these employees. All the ex-workcharged employees of the BCB were paid all the terminal benefits i.e. retrenchment compensation, gratuity and ex-gratia etc. on account of their retrenchment as per provision of ID Act, 1947 and Gratuity Act, 1972. It is further alleged that the claim is hopelessly time barred and there is no relationship of master and servant between the parties. The workmen have no legal enforceable right to claim employment in BBMB. It is therefore, prayed that the claim of the workmen and reference is devoid of any merit and the same deserved to be rejected in the interest of justice.

4. The workmen have filed their rejoinder/replication, reiterating the same facts alleged in the claim petitions as such, it does not required to be repeated again.

5. The above mentioned cases are fixed for evidence of the workman for several dates and even cases are taken at Camp Court at Sunder Nagar to facilitate the workmen to adduce their evidence. Unfortunately, in few

cases, affidavits of the workmen submitted but they did not turn up for cross-examination, making the affidavits filed as evidence not admissible in Evidence Act because of non-opportunity to the management to cross-examine the workmen. In other cases, workmen neither turn up for submitting affidavit nor prosecuting the case, resulting the learned counsel of the workmen namely Smt. Suchitra Thakur making the statement that she does not press these present claims because of the non-availability of the workmen and withdrawing her power of attorney from the present cases.

6. By virtue of the above facts and statement of learned lawyer of the workmen, these cases have become of no evidence cases as such, this Tribunal is left with no choice, except to pass a 'No Dispute Award/No Claim Award'. It is also clarified that passing of the no dispute award/no claim award would not bar the workmen from approaching the Appropriate Government/this Tribunal for adjudication of these cases on merits or filing any fresh claim.

7. Let copy of this award be sent to the Appropriate Government as required under Section 17(2) of the Act for publication.

8. Copy of the award be kept in ID No.120/2005 titled as Nanak Chand, ID No.122/2005 titled as Ram Singh, ID No.131/2005 titled as Birender Singh, ID No.146/2005 titled as Vidya Sagar, ID No.162/2005 titled as Bhikham, ID No.195/2005 titled as Sant Ram, ID No.210/2005 titled as Khem Chand, ID No.229/2005 titled as Roshan Lal, ID No.239/2005 titled as Jagat Ram, ID No.250/2005 titled as Lachman and ID No.258/2005 titled as Kundan Lal Vs. Bhakra Beas Management Board.

A. K. SINGH, Presiding Officer

नई दिल्ली, 29 जून, 2020

dk- vk- 487.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स एस.ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 125/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29.06.2020 को प्राप्त हुआ था।

[सं. एल-22012/137/2012-आईआर (सीएम-II)]
राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 29th June, 2020

S. O. 487.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 125/2012) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the Management of M/s. S.E.C. L and their workmen, received by the Central Government on 29.06.2020

[No. L-22012/137/2012-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/125/2012

Present: P. K. Srivastava
H.J.S..(Retd)

The General Secretary,
Koyla Mazdoor Sabha (HMS)
Qr. No. M/91, Vikas Nagar,
Post-Kusumunda,
District Korba, Chhattisgarh ...Workman

Versus

The General Manager,
SECL Kusmunda Area,
Post-Kusumunda
District Korba
Chhattisarh (C.G)

2. The General Manager (P&A)
SECL H.Q, Sipat Road,
Bilaspur (Chhattisragh) ...Management

AWARD

(Passed on this 20th day of March 2020)

1. As per letter dated 5-11-2012 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D.Act, 1947 as per Notification No. L-22012/137/2012-IR(CM-II). The dispute under reference relates to:

> "***Whether the action of the management of (i)the General Manager Kusumunda Area of SECL Kusumunda, District Korba (CG) and (ii) the General Manager (P&A), SECL H.Q. Bilaspur(CG) is not correction the date of birth in service sheet in respect of Sh. P.N. Shrivas, Assistant Store Keeper on the basis of the Matriculation Certificate as submitted at the time of appointment as well as the Form-B register of the company was legal, proper and justified?What relief the said workman is entitled to and from what date?*** ."

1. After registering the case on the basis of reference, notices were sent to the parties.

2. In its statement of claim, it was alleged by the workman/Union that the workman P. N. Shrivas was first appointed as Land Oustee on 25-4-1979. He submitted his High Secondary School Certificate issued in 1976 by Board of Secondary Education of Madhya Pradesh wherein his date of birth was recorded as 19-7-1958. His this date of birth was also recorded in his service sheet/register. He further had undergone initial medical examination as per Rule 29-B(a)(II) of Mines Rules 1955. His date of birth as mentioned in his High School Certificate which was 19-7-1958 was mentionedd in the form on the basis of High School Certificate. In the Form-B Register his date of birth was recorded as 13-12-1959. On 22-9-1997, the said workman was transferred from Kusumunda Project to Kusumunda Area and was released on 25-9-1997. In the last pay certificate issued from Kusumunda Project his date of birth as mentioned in the High School Certificate which is 19-7-1958 was mentioned. On 25-11-1997 he was transferred from Kusumunda Area to Johilla Area . In the Last Pay Certificate issued this time his date of birth was wrongly mentioned as 1-1-1955. On inquiry it was found that the date of birth mentioned in its service sheet was unilaterally corrected without informing him and a wrong date of birth 1-1-1955 was mentioned without adopting due procedure and informing the workman. The workman made a representation before the Management for correction of his date of birth in service sheet on 18-8-2008 but no action was taken . The Union raised this issue and an internal note was prepared and signed by Manager personnel on 15-3-2011 stating that his High School Certificate was sent for verification to the Chhattisgarh School Board which was verified by the Board and found correct. The General Manager (Personnel and Accounts) asked to summon the following documents:-

(a) Copy of original form of 1979 when he was appointed.

(b) Copy of service excerpts of 1987.

(c) What was his date of birth as per Employment Exchange record?

3. To this order of General Manager, the Area Manager supplied original Form-B and informed that service excerpts of workman were not available and also that the workman was employed as Land Oustee hence employment exchange records were also not available. The Management informed the Union vide communication dated 25-8-2011 refusing to correct the date of birth of the workman as mentioned in his High School Certificate for the reason firstly that the workman did not try to record his date of birth as per the High School Certificate at the time of his appointment on 21-4-1979 and secondly in the year 1987 when the service excerpts were prepared the workman did not raise objections.

4. It was further alleged that in the year 1983 the workman was promoted on the basis of his educational qualification from General Mazdoor to Assistant Store Keeper because the minimum qualification for Assistant Store Keeper is Matriculation or equivalent. Further it was alleged that the workman made repeated representations and inspite of prolonged discussions at various levels with the Union on this point the

Management did not correct his date of birth as per High School Certificate. The Management thus violated the provisions of Implementation Instructions No.76 in this respect. A dispute was raised by the Union in this respect before the Assistant Labour Commissioner after failure of conciliation, the reference was forwarded to this Tribunal. The workman has thus prayed for holding the action of Management in not correcting his date of birth as per the High School Certificate , improper and unjustified and further holding the workman entitled to consequential and other benefits which the Tribunal thinks fit.

5. The case of Management, as put in its written statement of defense is that the workman never produced his High School Certificate at the time of his initial appointment as Land Oustee. He was appointed as General Mazdoor for which there is no qualification prescribed. He did not produce any testimonial regarding his age proof and declared his date of birth as 1-1-1955 which has been recorded in the statutory record. His date of birth 1-1-1955 was declared by him in service register whereas date of birth recorded in form-B was 13-12-1959. Reasonable time was granted to employees to raise objection regarding correction of their date of birth according to the guidelines issued in I.I.No.37 subsequently modified by I.I.No.76 and notice in this respect were published on notice board. Copies of notices were supplied to Unions functioning in the Colliery. Further it was pleaded that in is last pay certificate issued subsequent to his transfer to Johilla Area his date of birth 1-1-1955 was recorded. The workman was further transferred from Johilla to Kusumunda in the last pay certificate subsequent to this transfer his date of birth was recorded as 1-1-955. Again in the last pay certificate issued on 24-4-2003 the same date of birth was recorded. It is the case of the Management that the workman has raised his dispute at the fag-end of his career hence his claim cannot be entertained. The Management further states that in his service sheet the date of birth of the workman was 1-1-1955 were as it was recorded as 13-12-1959 in form-B at the time of first joining and 19-7-1958 in High School Certificate. Also it was pleaded that mentioning of date of birth in the medical examination form is not relevant because it is not relevant for age determination. Accordingly it has been prayed that the reference be answered against the workman.

6. The workman has filed and proved documents (Exhibits W-1) copy of petition before Assistant Labour Commissioner, (Exhibit W-2) reply of Management before Assistant Labour Commissioner, (Exhibit W-3) rejoinder by the workman/union before the Assistant Labour Commissioner, (Exhibit W-4) letter of Management before Assistant Labour Commissioner refusing to correct the date of birth of the workman, (Exhibit W-5) report of Assistant Labour Commissioner regarding failure of conciliation , (Exhibit W-6) copy of form-B, (Exhibit W-7) copy of last pay certificate on transfer to Johilla issued on 22-11-2002, (Exhibit W-8) copy of letter of Management to workman/union refusing correction of date of birth, (Exhibit W-9) copy of cadre scheme No.8, (Exhibit W-10) copy of Implementation Instruction No.76,(Exhibit W-11) copy of marksheet of High School Certificate,(Exhibit W-12)copy of marksheet of supplementary examination, (Exhibit W-13) copy of application dated 19-8-2008 filed by the workman before the Management for correction of his date of birth, (Exhibit W-14) office order dated 10-12-1983 regarding appoint as Assistant Store Keeper, (Exhibit W-15) transfer order dated 27-11-1977 from Kusumunda Area to Johilla, (Exhibit W-16) office order regarding transfer on 4-11-2000,(Exhibit W-17) relieving order dated 11-12-1989, (Exhibit W-18) office order dated 15-11-2012, (Exhibit W-19) copy of application dated 5-5-2016,(Exhibit W-20) RTI letter by Management , (Exhibit W-21) copy of last pay certificate dated 17-2-2000 and 17-4-2000, (Exhibit W-21& W-22) copy of note sheet in two pages prepared by Management on the representation of workman for correction of date of birth, (Exhibit W-23) letter of Regional Manager (Personnel)regarding clarification sought by General manager in respect of mark sheet (Exhibit W-24).

7. The Management has filed and proved copy of service register of the workman (Exhibit M-1), (Copy of Form-B Exhibit M-2), Copy of Last Pay Certificates dated 11-10-2002, 21-3-2003, 4-12-1984, 25-4-2003 which are (Exhibits M-3 to Exhibits M-6) respectively.

8. The workman/Union has examined the workman Prakash Shrivas on oath. He has been cross examined by the learned counsel for the Management.

9. The Management has examined its witness P.V.Satyanarayan, Manager Personnel who has been cross-examined by learned counsel of workman/Union . There is an affidavit of Management witness Area Personal Manager Suresh Kumar Gupta,who never appeared for cross-examination, hence his affidavit cannot be read in evidence.

10. I have heard arguments of learned counsel for workman/Union Shri R.C. Shrivastava and Shri A.K.Shashi, learned Counsel for Management. I have gone through the records as well.

11. <u>The Reference in hand is the point of determination in the case.</u>

12. It has been submitted by learned counsel for workman that he had passed High School exam in the year 1976 by M.P.School Board wherein his date of birth 19-7-1958 was recorded in his High School Certificate. Three years thereafter, he was given appointment. He had produced his high school certificate at the time of

appointment but the Management wrongly entered his date of birth as 13-12-1959 in form-B and 1-1-1955 in his service sheet as well some last pay certificate without making inquiry and without giving the workman an opportunity of hearing. The workman did raise dispute from time to time in this respect but it was not heard. The Management firstly refused to correct the date of birth of workman violating the procedure laid down in II No.76 hence committed legality. Learned counsel has further submitted that I.I No.76 also the date of birth is mentioned in the High School Certificate is final and conclusive proof but the Management committed illegality in ignoring this document whose genuineness was itself verified by the Management from the School board. According to the learned counsel for workman/union the reference requires to be answered in favour of the workman.

13. Learned Counsel for the Management has submitted that there is tendency in the workman to raise dispute regarding their date of birth at the fag-end of their service which is impermissible under law because correction of date of birth of an employee, that to at the fag end of his service not only affects him but also affects the co-workers who are expecting to be promoted subsequent to retirement of that employee , Also it was submitted that workman had ample opportunity to raise this dispute long back when the excerpts of service records were communicated to the workman and they were asked to raise dispute in case of any discrepancy. Further more, learned counsel has submitted that the workman is first guilty of suppressing his real date of birth first at the time of appointment and also of laches hence he does not deserve any compassion from this Tribunal and requests that the reference be answered against the workman.

14. Learned Counsel for workman/union has referred to following case laws:-

1. **Bharat Cooking Coal Ltd. And Ors. Vs. Chhota Birsa Uranw (2014) III LLJ 1 SC.**
2. **G.M. Bharat Cooking Coal Ltd.vs. Shib kumar Dushad & Ors, (2000)8 SCC 696-(para-16),**
3. **State of Tamilnadu Vs. T.V.Venugopalan (1994)6 SCC 302 (para-7),**
4. **Union of India Vs Harnam Singh (1993)2 SCC 162 (para-9),**
5. **Surendra Singh Vs. State of M.P.& Ors.(2007)1 MPLJ 286(para-7),**
6. **State of U.P.& Another Vs. Shiv Narayan Upadhyay (2005)6 SCC 49,**
7. **Subhash Sinha Vs. SECL (WP(S) NO.1317/2015)decided by Hon.Chhattisgarh High Court on 31-8-2015(para-5),**
8. **Eastern Coal Fields Ltd. Vs. Bajrangi Raidas Civil Appeal No.8634-2013 arising out of SLP(C)22813-2007 decided by Hon'ble Supreme Court on 23-9-2013.**

15. Before entering into any discussion the Provisions of I.I No.76 requires to be mentioned here which are as follows:-

Implementation Instruction No. 76 dt. 25th Apr. 1988 No. CIL/NCW A-Ill fl. I. No. 76/88/ for determination/verification of the age of the employees and for resolution of disputed cases of Service Records .

1. **The procedure for determination/verification of the age of the employees as finalised by the JBCCI-11 was circulated for implementation vide Implementation Instruction No. 37dated 5th February, 1981.**
2. **At the 3rd meeting of the JBCCJ-IV held on 19th and 20th August, 1987 the subject of completion of Service Records of the workers was further discussed. In order to examine the entire matter a Service Records Committee consisting of representatives of Management and Workers was constituted with the follo-wing terms of reference :**
   - **(a) To examine and clarify the nature of disputes pertaining to service records.**
   - **(b) To evolve guidelines, standards and procedures for resolving disputes including age.**
   - **(c) To initiate a reporting system to monitor progress in resolving disputes.**
3. **The Service Records Committee held several meetings and the record notes of discussions were finally placed before the JBCCI-IV at the 9th meeting held on 8th and 9th March,1988 which were approved with certain modification.**
4. **Final approved decisions are given below serially for implementation. The procedure/orders outlined hereunder are in supersession of the existing procedure /orders.**

5. Undisputed Cases :

It was agreed that in undisputed cases, with a view to have stable record of service, the entire data in the Service Record should be computerised and a copy should be retained at the Colliery/Project/Area/Subsidiary level and at the Headquarters of Coal India. Such undisputed cases will not be reopened. It was also agreed that after the task of computerization is over, a copy of the print out will be given to the employee concerned.

6. Procedure for determination/verification of the age of employee:The earlier Implementation Instruction No. 37 dated 5th February, 1981 has been revised and the same is enclosed as Annexure-!.

7. Disputes relating to qualifications :

It was agreed that an employee raising a dispute regarding his/her qualifications shall submit his/her certificates relating to his/her qualifications to the management and the managements after satisfying about the genuineness of the claims would insert the said qualifications in the Service Record of the employee. original documents by the employee would be returned to him/her after verification and photo copies retained, if required by the Management.

8. Disputes in respect of date of appointment :

In the case of taken over employees, the date of appointment is determined with reference to the employment of the employee under the immediate past employer from where he was taken over. Relevant CMPF records relating to qualifying for membership may also be taken into account. The date of appointment may continue to be determined on this basis.

9. Disputes in respect of number and names of dependents :

It was agreed that the declaration incorporating names of dependents made in respect of CMPF, LTC records and gratuity will be taken into consideration. Where the worker concerned is residing with the family in the Company• a quarter,certificate of the Welfare Officer/Manager may be taken as final for the purpose. In case of employee who is not residing with his family, certificate issued by Gram Panchayat/Notified Area Council/Municipal Corporation concerned, countersigned by the BDO/Circle Officer when taken into consiideration.

10. Disputes In respect of Home Address :

It was agreed that while deciding the cases of change in home address or wrong recording of the home address, the workmen concerned will give an affidavit stating the reason as to why he wants t0 change or the circumstances in which his home address was wrongly recorded. He will also mention in his affidavit about the location or his property at the new place. Alongwith the affidavit, the workmen concerned will also have to submit a certificate issued by the Mukhia of the Gram Panchayat/Notified Area Council/Municipality/Corporation countersigned by the BOO/Circle Officer certifying his home address.

In case of destabilisation due to mining operations or natural calamities etc., the change of home address shall be accepted after due verification.

11. The decision of the Age Determination Committee/Medical Board will be binding and final.

12. It was also agreed that ate disputes pending in the case of employees superannuated on and after 1st July, 1987 will be examined in accordance with the revised procedure and all past cases will not be re-opened.

13. The above procedure will come into force with immediate effect and will supersede the existing procedure/orders.

16. Scrutiny of oral and documentary evidence show that different date of births were recorded in different documents maintained and issued by the Management. It was 13-12-1959 in Form-B which is prepared at the time of first entry of workman in service. In service record It is 19-7-1958 and in some last pay certificates it is 1-1-1955 . In the High School Certificate the date of birth is mentioned as 19-7-1958. This is also not disputed that the workman was promoted on the basis of High School Qualification from the post of General Mazdoor where he was initially appointed to the post of Assistant Store Keeper for which minimum qualification was High School Certificate, thus the date of birth of the workman was itself disputed in the records of the Management, which were itself maintained by Management. In such a situation it was obligatory on

Management to make an inquiry regarding the fact as to which of the different dates of birth of the workman is correct. The management did not conduct any inquiry in this respect on its own. (Exhibit W-23) is the note sent by Management(Personnel) to General Manager (P & A) wherein it has been mentioned that the Union has been persistently raising the issue regarding correction of the date of birth of the workman. The Relevant portion of this note is being reproduced as follows:-

The Date of appointment 21-4-1979 of Shri Shrivas and Date of Birth in various records is as under:

In service Sheet :	**1-1-55(Then corrected as 19-7-58 as per School Certificate, passed in 1976(Annexure-A)**
In B-Form :	**13.12.59(At the time of appointment)(Annexure-B)**
In School Certificate :	**19-7-58(Annexure-C)**

17. Following was the information sought by the General Manager as it is apparent on Exhibit W-23:-

"Please examine the case. At this stage the case of age dispute should not come to us. He has not mentioned the age recorded in service excerpts. Has the applicant made dispute in respect of age."

18. These information were sent by the Regional Manager to the General Manager which is mentioned in Exhibit W-24 proved by the Management.

19. Exhibit W-8 is the communication dated 25-8-2011 sent by Regional Manager9Pwersonnel)to Union declining correction of date of birth on the ground that the workman should have got entered his correct date of birth on 21-4-1979 when he was first appointed. He should have mentioned his correct date of birth in 1987 when his service records were prepared. He did not mention this mistake , hence correction at this stage is not possible.

20. As mentioned above, there is definite mechanism for correction of date of birth in respect of any dispute, regarding this which is mentioned in Provisions of I.I NO.76, reproduced earlier which goes to show that in case of such a dispute first priority shall be the matriculation certificate. (Exhibit W-23) makes it clear that the matriculation certificate was found to be genuine. This is also not disputed that the workman had passed matriculation examination three years before his appointment. Ignoring matriculation certificate while considering the dispute regarding age of the workman is not justified in law as it was done by Management .

21. The only ground taken by Management in ignoring this certificate is that dispute was not raised earlier rather it was raised at a later stage.

22. (Exhibit M-1) filed and approved by Management is the copy of menial service register of the workman. It goes to show that firstly his date of birth 1-1-1955 was mentioned and is also mentioned that as per High School Certificate issued by M.P.Board the date of birth of the workman was mentioned as 19-7-1958. The last pay certificate Exhibit W-21, W-22 issued on 17-2-2000 and 17-4-2000 mention the date of birth of the workman as 1951 as per his high school certificate whereas the last pay certificates Exhibit M-3 dated 11-10-2002, 21-3-2003, 4-12-1984 and 25-4-2003 show the date of birth of workman as 1-1-1955. Now the established fact which comes out is that there were different date of births mentioned in different records regarding the workman which were mentioned by the Management itself, hence the Management which was duty bound to inquire about the correct date of birth of the workman on its own , has failed in its duty in law, in not doing so.

23. Learned counsel for Management has forcefully submitted that the Management was justified in refusing correction of date of birth on the ground of laches.

24. In the first case of Union of India Vs. Harnam Singh(Supra)**" there was a rule prescribed in 5 years to raise dispute regarding age"**. The workman failed to raise dispute within this period. Following observation of Hon'ble the Apex Court requires to be mentioned in this respect **"A Government servant who has declared his age at the initial stage of the employment is , of course not precluded from making a request later on for correcting his age. It is open to a civil servant to claim correction of his date of birth, if he is in possession of irrefutable proof relating to his date of birth as different from the one earlier recorded and even if there is no period of limitation prescribed for seeking correction of date of birth, the Government servant must do so without any unreasonable delay."** Same are the facts of the case of T. N. Venugoplan (Supra).

25. In the case of G.M.Baharat Cooking Coal Ltd. Vs. Shib Kumar Dushad & Ors. (2000) 8 SCC 696 referred by learned counsel for Management the facts were that the workman had availed certain benefits on the basis of his date of birth recorded in his service record which he tried later on to get it corrected. The Apex court held him not entitled to such correction inspite of this, following observation of Hon'ble Apex Court requires to be mentioned:-**"Therefore, while determining the dispute in such matters the Court should bear in mind that change of date of birth after long joining service, particularly of the employees due to retire shortly will upset the date recorded in service record maintained in due course of administration should not generally be accepted. In such a case burden in heavy on employee who comes to the Court that date of birth in service record maintained by employer as untrue and correct, this burden can be discharged only by producing acceptable evidence of clinching nature."**

26. In the case of Shiv Narayan Upadhyay (Supa) also it has been held that:-**"challenge to the date of birth as recorded in the service book made on the eve of retirement should not normally be entertained. The onus lies on employee concern to prove by irrefutable evidence his plea of error in service book."** In the other cases also mentioned by learned counsel for Management same Principle of law has been laid down and affirmed.

27. Thus the principle of law which crystalizes from the aforesaid case law is that firstly dispute regarding correction in date of birth should be recorded at earlier stage and secondly when it is raised at late stage the Tribunal should be slow in accepting it until and unless there is irrefutable and clinching evidence to prove the error and also that mistake in date of birth has resulted in injustice to the workman.

28. Now coming to the proved facts of the case in hand which are firstly that Management should have itself settled the issue because the documents of Management itself show discrepancy regarding date of birth wherein they failed and secondly when they considered this correction on the representation of workman/union in this respect they failed to adopt procedure prescribed in I.I No.76 which states that in such a cases date of birth recorded in High School Certificate should be conclusive and Final that to in a case were Management itself got certified the High School Certificate and it was found genuine, more so, the High School Certificate was of 1976 i.e. 3 years before he got service.

29. Hence in the light of above discussion, I am constrained to hold that the action of Management in not correcting the date of birth or workman Shri P.N.Shrivas on the basis of his matriculation certificate as submitted by him at the time of his appointment was unjustified in law. Consequently the workman is held entitled to all service and post retiral benefits taking his superannuation date on the date of birth recorded in his matriculation certificate treating him to be in continuous service.

30. On the basis of the above discussion, following award is passed:-

A. The action of the management (i) the General Manager Kusumunda Area of SECL Kusumunda, District Korba (CG) and (ii) the General Manager (P&A), SECL H.Q. Bilaspur (CG) in not correcting the date of birth in service sheet in respect of Sh. P. N. Shrivas, Assistant Store Keeper on the basis of the Matriculation Certificate as submitted at the time of appointment as well as the Form-B register of the company is held to be not legal and justified.

B. The workman is held entitled to all service and post retiral benefits treating him in continuous service till date from his date of retirement according to this date of birth recorded in matriculation certificate.

P. K. SRIVASTAVA, Presiding Officer

DATE: 20.3.2020

नई दिल्ली, 29 जून, 2020

dk vk 488.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स डब्ल्यू.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 38/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29.06.2020 को प्राप्त हुआ था।

[सं. एल-22012/194/2012-आईआर (सीएम-2)]
राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 29th June, 2020

S. O. 488.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 38/2015) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the Management of M/s. W.C. L and their workmen, received by the Central Government on 29.06.2020.

[No. L-22012/194/2012-IR(CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/38/2015

Present: P. K. Srivastava
H.J.S..(Retd)

The General Secretary
Rashtriya Koyla Khadan Mazdoor Sangh
(INTUC), Shramik Shakti Bhawan,
P.O. Chandametta,
District Chhindwara (M.P.) ...Workman

Versus

The Manager,
Western Coal Fields Ltd.
Nandan Mines No.1, Kanhan Area PO
Nandan, District Chhindwara (M.P.) ...Management

AWARD

(Passed on this 17th day of March, 2020)

As per letter dated 31/3/2015 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D.Act, 1947 as per Notification No. L-22012/194/2012-IR(CM-II) The dispute under reference relates to:

"**Whether ex-parte departmental enquiry against workman(Sh.Rajendra Gautam)was fair and is not against the principle of natural justice? If yes, what relief the workman is entitled to? .**"

1. The workman did not appear inspite of notice, hence the reference proceeded ex-parte vide order dated 1-6-2017.

2. The Management has stated in its statement of defense that the workman had passed matriculation exam in the year 1988. Certificate was issued on 7-7-1988. The self-attested matriculation certificate and mark sheet were submitted by him in person with the Management for his selection to the post of Overman though he was already working as workman(loader) from 15-4-1974 . The testimonials were found false; hence he was issued with a charge sheet No.681 dated 2-6-2011 under Clause 26.1, 26.9 and 26.43 of the standing orders. He submitted his reply. A department inquiry was ordered against him vide order No.693 dated 8-6-2011. An inquiry officer was appointed and inquiry was held on several dates. The workman proceeded in the inquiry. The Inquiry Officer submitted the inquiry report holding the workman guilty of the charges. The workman was issued a show cause notice dated 24-6-2011 on the point of sentence with a copy of Inquiry Report. He submitted his representation on the show cause notice . Services of the workman were dismissed vide order dated 29-6-2011. According to the workman the inquiry conducted was not legal and proper, charges were not proved and sentence is excessive. The workman has accordingly sought relief of his reinstatement with all back wages and other benefits ,setting aside his dismissal.

3. The Management filed affidavit of its witness which remained uncross-examined. The Management also filed and proved inquiry proceedings and Inquiry Report Exhibits M1 to M6.

4. No evidence was adduced by the workman.

5. Arguments of Mr. A.K. Shashi, learned counsel for Management was heard by me and record was perused.

6. The burden to prove that the inquiry conducted was not legal and proper and charges were not proved lies on workman in which he has miserably failed as he had not adduced any evidence on these points. On the other hand the evidence of Management in form of affidavits and documents mentioned above clearly establish that there was no illegality conducted in Departmental Inquiry. Also the charges are found proved on the basis of the Inquiry Report. There is nothing on record to indicate that sentence is excessive.

7. On the basis of above discussion the departmental inquiry conducted against the workman is held legal and proper and workman is entitled to no relief.

8. The following award is passed:-

A. The ex-parte departmental enquiry against workman (Sh. Rajendra Gautam) was fair and is not against the principle of natural justice.

B. The workman is held entitled to no relief.

P. K. SRIVASTAVA, Presiding Officer

DATE: 17.3.2020

नई दिल्ली, 30 जून, 2020

d k vk 489.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केनरा बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ सं. 91/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 30.06.2020 को प्राप्त हुआ था।

[सं. एल-12012/46/2017-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 30th June, 2020

S.O. 489.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 91/2017) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the industrial dispute between the management of Canara Bank, and their workmen, received by the Central Government on 30.06.2020.

[No. L-12012/46/2017-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHENNAI

Present : DIPTI MOHAPATRA, LL.M., PRESIDING OFFICER

I.D. No. 91/2017
22.04.2020

Sri S. Vijayakumar
35, Ashok Nagar
Arumbakkam
Chennai-600106 : 1st Party/Petitioner

AND

The Generral Manager
Canara Bank Circle Office
524, Anna Salai
Teynampet
Chennai-600018 : 2nd Party/Management

Appearance:

For the 1st Party/Petitioner : None

For the 2nd Party/Management : M/s. P. Amirtharaj

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-12012/46/2017-IR/B.II dtd. 26.09.2017 referred the following Industrial Dispute to this Tribunal for adjudication.

The Schedule mentioned in that order is:

"*Whether the demand of Sri S. Vijayakumar for reinstatement, who was in service of the Canara Bank from 19.11.2014 to 17.03.2015 is legal, fair and justified? If so, then what relief the workman is entitled to?*"

2. On receipt of the above reference from the appropriate Government, the dispute on reference is registered in ID No. 91/2017 and notices were issued to both the parties for their appearance fixing the case to 02.01.2018. Since then, the case is dragged for such a long period till 16.03.2020 intervening almost 16 adjournments i.e. 7 adjournments in the year 2018, 7 adjournments in the year 2019. Even if the petitioner did not turn up, the Tribunal suo-moto afforded two more opportunities i.e. 13.01.2020, 02.03.2020 and 16.03.2020 directing the petitioner for appearance to file his Claim Statement. It is further noticed that despite of sufficient opportunities the petitioner simply chose not to avail the same. Since the petitioner did not turn up the case was posted for final order.

3. In view of the discussion held supra it is crystal clear that the petitioner has got no interest to proceed with the case. Thus, the Tribunal is not in a position to adjudicate the dispute as referred by the appropriate government. The non-cooperation and default in appearance of the petitioner constrained the Tribunal not to repost the proceeding to any other date.

Accordingly, it deems there exists no Industrial Dispute for adjudication as per the reference.

In the result the reference is answered against the petitioner.

An Award is passed accordingly.

DIPTI MOHAPATRA, Presiding Officer

(Dictated and transcribed by PA and corrected and pronounced in the open court on this day the 22nd April, 2020)

नई दिल्ली, 30 जून, 2020

d k- v k- 490.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पारादीप पोर्ट ट्रस्ट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ सं. 06/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 30.06.2020 को प्राप्त हुआ था।

[सं. एल-38011/01/2015-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 30th June, 2020

S.O. 490.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 06/2015) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the industrial dispute between the management of Paradip Port Trust, and their workmen, received by the Central Government on 30.06.2020.

[No. L-38011/01/2015-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 06 OF 2015

Dated Bhubaneswar, the 25th February, 2020

Present: Shri B.C. Rath, Presiding Officer,
C.G.I.T-cum-Labour Court, Bhubaneswar

Between:

The Chairman,
Paradip Port Trust,
Paradip, Dist: Jagatsinghpur ...First party management

AND

The General Secretary,
Paradip Port Worker's Union, Badapadia,
Paradip Port, Dist: Jagatsinghpur. ...Second party Union

Appearances:

Miss. Kajal Das : For first party management
Sri Sudhakar Mantry : For second party Union

AWARD

The Government of India, Ministry of Labour have referred the industrial dispute for adjudication vide its Order No. L-38011/01/2015 – IR(B-II) dated 09.03.2015 in exercise of powers conferred by clause (d) of sub-section(1) and sub-section (2-A) of Section 10 of the Industrial Disputes Act,1947 (14 of 1947) (here in after referred to as "the Act") and the terms of reference reads as follows.

> "Whether the demand of the Union for payment of wages in skilled of the minimum wages in a Scheduled employment to the workmen working as gardener for several years is legal and/or justified ? If not, what relief the workmen are entitled to ?"

2. The case of the second party Union as emerging from its statement of claim is that the disputant workmen 64 in numbers are engaged directly by the management of Paradip Port Trust for garden work in different Divisions of the Port like Executive Engineer, E&CM Division, Executive Engineer, PH Division and Executive Engineer, Harbour works Division-III. Their services are utilized for beautification of plantations (shaping of plants), lawn preparation, nourishment of plants etc. in those Divisions. Though, they have been working directly under the control and supervision of different authorities of the management, they are shown engaged through the contractors (outsourcing agencies in the namesake). The agreements/transactions (if any) between the management and the outsourcing agency contractor are sham and camouflage. The work/job carried out by the disputants are perennial in nature. Therefore, the disputants shall be counted as employees of the first party management for all purposes. It is the claim of the second party Union that the disputants and several other workmen engaged in gardening works of the first party management were paid minimum wages fixed for skilled category labourers, when they were engaged directly by the management. Subsequently the workmen/labourers engaged in the gardening work are engaged through outsourcing agency contractors in namesake and they were paid wages being treated as unskilled labourers. The workers engaged by the Horticulture Department of PPT for gardening work have been categorized/declared as skilled workers by the Technical Officer, who has been brought on deputation from the Department of Horticulture and Soil Conservation, Government of Odisha. Hence, those workers 38 in numbers are being paid wages fixed for skilled labourers keeping in view the Award/settlement arising in I.D. Case No.17/2011. Those workmen are paid higher wages equivalent to the wages fixed for skilled category labourers with effect from 1.6.2011 where as, the disputants are paid wages fixed for unskilled labourers despite they do equal works like the workers engaged in Horticulture Department of the PPT. According to the second party Union that the labourers/workers engaged by the PPT management for gardening were initially paid wages fixed for semi-skilled labourers. But, the wages was reduced to the wages flxed for unskilled labourers. Such change of wages for the workmen was made without a statutory notice as required under Section 9-A of the Act. Hence, 38 workmen engaged directly by the PPT raised a

dispute for reduction of their wages without prior notice under Section 9-A of the Act. However, by virtue of a settlement in such reference case before the Presiding Officer, CGIT, Bhubaneswar, the workmen engaged by the PPT in Horticulture Department are allowed wages fixed for skilled category labourers. When the disputants claimed higher wages on the principle of "equal pay for equal work", the management did not concede their demand. Accordingly a dispute was raised before the RLC (C), Bhubaneswar consequent upon which the reference is made as conciliation effort between the parties was failed.

3. The management has resisted the claim on the grounds that different places under the possession of the first party management are notified for gardening purposes. Such gardens are being maintained through outsourcing agencies like contractors. The contractors deploy their own labourers/workmen and used their tools, tackles, and other materials required for the purpose of gardening. The persons deployed in such gardening work are being paid by the contractors. Thus, they being the employees of contractors are working under the direct control and supervision of the contractors and they are also under their pay rolls. The disputants being workmen of different contractors are not the employees of the management. There being no employer and employee relationship between the first party management and the disputant workmen, the dispute under reference is not maintainable in the eye of law. Besides, it is the contention of the first-party management that the disputants being labourers are doing the garden works and at best, they are being Gardener are entitled to the minimum wages fixed for such Gardener. As per the Gazette Notification of the Government of India the Gardeners are in the category of unskilled labourers. Hence, they are entitled to the wages fixed for unskilled labourers. It is also the stand of the management that no Gardener is working under the management and as such, question does not arise for raising a dispute by an employee of the management. Rather, such Gardener is entitled to the wages fixed for the category of unskilled person. The disputants are paid wages being treated as unskilled labourers keeping in view the Gazette Notification of the Government of India and therefore, they are not entitled to any higher wages paid to a workman under semi-skilled or skilled category. Therefore, the statement of claim having no merit for consideration shall be rejected.

4. On the aforesaid pleadings of the parties, the following issues have been settled for adjudication of the dispute.

ISSUES

i) Is the reference maintainable in the eye of law ?

ii) Whether the demand of the Union to pay wages to the workmen working as Gardener for several years at the rate of minimum wages fixed for skilled labourers is legal and justified ?

iii) If not, what relief the workmen are entitled to ?

5. The second party Union has examined Sri Pramod Kumar Majhi, Sri Pabitra Mohan Das, Sri Pratap Kumar Mallick, Sri Duryodhan Khuntia, Sri Akshya Kumar Sutar, Sri Sarada Prasanna Das, Sri Ramakanta Malla, Sri Adwaita Charan Nayak and Sri Parsuram Chand as W.W.1 to W.W.9 and filed documents like copy of list of 64 workers, copy of list if 43 workers declared as skilled workers basing on the Award dated 7.12.2011, copy of letter dated 10.6.2014 addressed to Dy. CLC (C), Bhubaneswar, Copy of Award passed by the Presiding Officrer, CGIT, Bhubanesewar in I.D. Case No. 17/2011, Copies of Memorandum of settlements dated 25.8.2011, 26.7.2012, 26.7.2012 and 27.1.2011, copy of Notification issued U/s.10 of CL (R&A) Act, 1970, copy of letter dated 1.4.2016 of RLC (C), copy of letter dated 8.8.2012 of the Union to the Chairman, Paradip Port Trust, copies of wage slips of Pramod Kumar Majhi, Pabitra Mohan Das, Pratap Mallick, Duryodhan Khuntia, Akshaya Kumar Sutar, Sarada Prasanna Das, Ramakanta Malla, Adwaita Charan Nayak and Parsuram Chand marked as Ext.1 to Ext.19 to substantiate their claim where as, the first party management has examined its Executive Engineer as M.W.1 to refute the allegations raised in the statement of claim.

FINDINGS

6. The second issue whether the workmen are entitled to the wages fixed for the category of skilled labourers/workmen, being the bone of contention in the dispute is taken into consideration first. On a close scrutiny of the pleading of the second party Union and oral testimony of some of the disputant workmen, it is seen that the main grievance of the disputants are that they were initially paid wages in the category of semi-skilled labourers being engaged as Mali. But, their wages was reduced to the wages fixed for unskilled labourers. Persons directly engaged in the Horticulture Department of the management of the PPT are paid wages in skilled category whereas, they are doing the same work and engaged in other areas of the Port are paid less wages equivalent to the wages fixed for unskilled labourers. It is the stand of the second party Union that the persons engaged in Horticulture Department were also paid wages in unskilled category.

But, they are paid wages as skilled category after a settlement and an Award dated 26.8.2011 arising in I.D. Case No. 17/2011. It is emerging from the oral evidence of M.W.1 and the copy of the Award dated 26.8.2011 of the Presiding Officer, CGIT, Bhubaneswar arising out of I.D. Case No.17/2011 that reference was made earlier to this CGIT wherein, the action of the Executive Engineer, E&CM Division, Paradip Port Trust in withdrawing the rights of 38 Horticulture Workers and degrading their status from skilled category to unskilled category in various trades of Horticultural works was disputed. By virtue of a Memorandum of Settlement in Form – H the Tribunal passed an Award that the disputants in the said case of reference would be counted as skilled category with effect from 1.6.2011 till they are engaged in the particular work. It is further emerging from the oral testimonies of W.W.1 to W.W.9 and documents like Exts.2, 4, 6 and 6/1 that workers/contract labourers engaged through contractors in the premises of park inside Jawahar Guest House, in the premises of Balijhara Area etc. being engaged in Horticulture work were given wages of skilled category with effect from 26.7.2012. Prior to that 38 workmen were paid wages of skilled category by virtue of an Award in I.D. Case No.17/2011. The management has neither denied nor specifically pleaded either in their written statement or in the evidence of M.W.1 that the workers paid higher wages of skilled category are directly engaged by them or their duty/job/work is different than the job /work/duty done by the present disputants. On the other hand, it is emerging from Exts. 6 and 6/1 that the workers paid higher wages in the skilled category are also contract labourers or labourers engaged by the contractors (outsourcing agencies). When the same category of workers being engaged through contractor are paid wages of skilled category, the disputants being engaged in same nature of work like gardening and having the same status of contract labourers or labourers hired through the contractors outsourcing agencies cannot be discriminated and treated differently more particularly in absence of specific pleading and evidence that the workers paid higher wages are their employees and their nature of job is different than the nature of job discharged by the disputants.

7. Further, it cannot be over sighted that the pleading and evidence has been advanced by the second party that the workers engaged in gardening were earlier paid wages of semi-skilled category. When it was reduced to unskilled category, the workers engaged in Horticulture Department of the management raised the earlier dispute. As a result of which, a settlement was arrived at and the workers in Horticulture Department were entitled to the wages of skilled category. The management has also not disputed that earlier the present disputants were paid wages of semi-skilled category and it was reduced to unskilled category. Thus, the disputants are found to be in similar footing like the workers who are paid wages of skilled category. When, status of both the workers and nature of their job/work/duty are identical, a set of those workers cannot be discriminated. All of them shall be treated equally. Therefore, the demand of the disputants that they being in the job/work/duty of gardening like other workmen in Horticulture Department of the management are entitled to the wages of skilled category, is legal and justified.

8. Coming to other issues regarding maintainability and the relief to which the workmen are entitled, it is seen that in I.D. Case No.17/2011 the workmen were also stated to have been engaged in gardening work of Horticulture Department through contractors. But, the management came forward to settle the dispute raised by those workmen allegedly engaged through contractors. When the present dispute is raised on the self and same ground taken in the I.D. Case No.17/2011, it would not be legal and justified to reject the statement of claim of the second party Union on the ground of maintainability that too non-existence of relationship of employer and employee. The disputants have claimed wages in the skilled category with retrospective effect at par the workmen in I.D. Case No. 17/2011. But, it cannot be over-looked that those workmen in I.D. Case No.17/2011 received the enhanced wages after a settlement reached between the parties. Hence, it would be just and appropriate to allow the disputants to avail the wages at par with other contract labourers i.e., the workmen in I.D. Case No.17/2011 from the date of this Award provided they are engaged in similar nature of work i.e. Mali.

9. For the discussions and analysis made above, the demand of the second party Union for payment of wages to the 64 disputant workmen in a scheduled employment as Gardener (Mali) in skilled category is legal and justified. However, the disputant workmen would be entitled to the wages at par with the workmen in I.D. Case No.17/2011 i.e., wages for skilled category from the date of the Award.

Accordingly the reference is answered and Award is passed.

Dictated and corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 30 जून, 2020

dk- vk- 491.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक आफ बडौदा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जयपुर के पंचाट (संदर्भ सं. 51/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 30.06.2020 को प्राप्त हुआ था।

[सं. एल-12012/10/2005-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 30th June, 2020

S.O. 491.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 51/2005) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jaipur as shown in the Annexure, in the industrial dispute between the management of Bank of Baroda, and their workmen, received by the Central Government on 30.06.2020.

[No. L-12012/10/2005-IR(B-II)]

SEEMA BANSAL, Section Officer

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i hBklhu vf/kdkjh % राधामोहन चतुर्वेदी

jSQjsal ua L-12012/10/2005–IR(B-II) fnukad 21/04/2005

मुकेश कुमार गुप्ता पुत्र श्री भूदेव प्रसाद
निवासी–राजगिरीश हॉस्पीटल के पीछे, सीतला कालोनी,
हिण्डौन सिटी, जिला करौली।

cuke

1. बैंक आफ बड़ौदा जरिये मुख्य प्रबन्धक माण्डवी, बड़ौदा
2. सहायक उप महाप्रबन्धक, जौनल आफिस, बैंक आफ बड़ौदा आनन्द भवन, चौथी मंजिल, संसारचन्द्र रोड, जयपुर।
3. प्रबन्धक, बैंक आफ बड़ौदा ब्रान्च हिण्डौन सिटी जिला करौली, राज.
4. प्रबन्धक, बैंक आफ बड़ौदा ब्रान्च कंचनपुर तहसील मासलपुर जिला करौली।

प्रार्थी की ओर से : श्री आर.सी. जैन –प्रतिनिधि

अप्रार्थी की ओर से : श्री टी.पी. शर्मा –अधिवक्ता

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fnukad %05-03-2020

1. श्रम मंत्रालय भारत सरकार, नई दिल्ली द्वारा दिनांक 21.04.2005 को औद्योगिक विवाद अधिनियम 1947 (जिसे आगे मात्र अधिनियम कहा जावेगा) की धारा 10 उपधारा (1) (डी) एवं 2–ए के अन्तर्गत प्रदत्त शक्तियों के प्रयोग में निम्नांकित विवाद इस अधिकरण को न्यायनिर्णयन हेतु प्रेषित किया गया "Whether the workman Shri Mukesh kumar Gupta S/o. Shri Bhudev Prasad Gupta has worked more than 240 days in Bank of Baroda from 01.04.1998 to 01.10.2002 in a calendar year ? If yes, then whether the action of the management of Bank of Baroda in terminating him from 01.10.2002 is legal and justified? If not to what relief the concerned workman is entitled?"

2. उपयुक्त विवाद प्राप्त होने पर उभयपक्ष को आहूत करते हुए प्रार्थी को निर्देश दिया गया कि वह अपने दावे का अभिकथन प्रस्तुत करें।

3. दिनांक 19.7.2005 को प्रार्थी ने अपने दावे का अभिकथन प्रस्तुत किया। प्रार्थी का यह कथन है कि दिनांक 01.04.1998 से विपक्षी बैंक की शाखाओं में उसने चतुर्थ श्रेणी कर्मचारी के तौर पर कार्य किया। अप्रार्थीगण ने प्रार्थी की सेवायें बिना किसी नोटिस वेतन एवं मुआवजा दिये अवैध रूप से दिनांक 01.10.2002 के पश्चात समाप्त कर

दी। प्रार्थी ने सहायक श्रम आयुक्त केन्द्रीय कोटा के समक्ष परिवाद प्रस्तुत किया, लेकिन अप्रार्थीगण ने प्रार्थी को सेवा में लेने से इन्कार कर दिया। प्रार्थी को सर्वप्रथम दिनांक 01.04.1998 को हिण्डोन सिटी शाखा में दैनिक वेतन भोगी के रूप में नियुक्त किया गया था। उसने 31.3.2002 तक कार्य किया। दिनांक 1.4.2002 से विपक्षी की कंचनपुर शाखा में प्रार्थी को चतुर्थ श्रेणी कर्मचारी के रूप में 100 रूपये प्रतिदिन पर नियुक्त किया। प्रार्थी ने इस अवधि में एक कैलेण्डर वर्ष में 240 दिन से अधिक सेवा की है। अप्रार्थीगण द्वारा 3–4 बार स्थायी कर्मचारियों की नियुक्ति की जा चुकी है। प्रार्थी का नाम नियोजन कार्यालय द्वारा भेजे जाने पर भी प्रार्थी को प्राथमिकता एवं अनुभव के आधार पर स्थायी नियुक्त नहीं किया गया। प्रार्थी को बिना किसी सुनवाई एवं नोटिस दिये दिनांक 01.10.2002 से सेवामुक्त कर दिया गया। प्रार्थी से कनिष्ठ कर्मचारियों को अप्रार्थीगण ने कार्य पर रखा और नियमित किया। इस प्रकार अप्रार्थी ने अधिनियम की धारा 25 (एफ), (एच) व 2 (के.के.के.) तथा नियम 77 व 78 का उल्लंघन किया है। अतः प्रार्थी को समस्त विगत लाभों एवं निरन्तरता सहित बहाल किया जावें और बकाया राशि ब्याज सहित दिलवायी जावें।

4. दिनांक 19.12.2005 को विपक्षी ने वादोत्तर प्रस्तुत किया। विपक्षी का कथन है कि प्रार्थी को एक आकस्मिक अंशकालीन श्रमिक के रूप में आकस्मिक कार्य की पूर्ति हेतु रखा गया था। कार्य समाप्ति के बाद सेवा स्वतः समाप्त मानी गयी थी। प्रार्थी को किसी स्वीकृत पद पर नहीं रखा गया था। बल्कि स्थायी कर्मचारी के अवकाश के रहने के समय उसे कार्य पर रख लिया गया था। उसे किसी निर्धारित प्रकिया के अन्तर्गत नियुक्त नहीं किया गया था। प्रार्थी ने कभी भी 12 माह के अन्तराल में 240 दिन से अधिक कार्य नहीं किया। इसलिये अधिनियम की धारा 25 (एफ) का संरक्षण उसे प्राप्त नहीं है। प्रार्थी श्रमिक का नाम नियोजन कार्यालय से नियुक्ति हेतु नहीं भेजा गया। आकस्मिक श्रमिक को नियमित किये जाने का कोई प्रावधान नहीं है। प्रार्थी को कोई नोटिस या नोटिस वेतन तथा मुआवजा दिया जाना आवश्यक नहीं था। विपक्षी के अधीन नियमित रूप से नियुक्त कर्मचारी व आकस्मिक श्रमिक के कार्य में कोई समानता नहीं है। प्रार्थी को कोई अनुतोष विधि के अनुसार देय नहीं है। अतः दावा निरस्त किया जावें।

5. प्रार्थी ने अतिरिक्त कथन प्रस्तुत करते हुए विपक्षी के कथनों को अस्वीकार किया और विपक्षी द्वारा की गई आपत्तियों को अप्रासंगिक एवं असंगत बताया। प्रार्थी का यह कथन है कि प्रार्थी की उपस्थिति और वेतन भुगतान का समस्त अभिलेख विपक्षी के पास ही है। अतः वाद स्वीकार किया जावें।

6. प्रार्थी ने अपने साक्ष्य में स्वंय मुकेश कुमार गुप्ता को परीक्षित किया और प्रलेखिय साक्ष्य में प्रदर्श डब्ल्यू–1 से डब्ल्यू–6 तक प्रलेख प्रदर्शित किये।

7. अप्रार्थीगण ने अपने साक्ष्य में श्री फूलचन्द मीणा शाखा प्रबन्धक एवं श्री अशोक कुमार गोयल मुख्य प्रबंधक को परीक्षित किया। प्रलेखीय साक्ष्य में प्रदर्श–एम 1 से एम–6 तक प्रलेख प्रदर्शित किये।

8. दिनांक 29.1.2020 व 5.2.2020 को मैनें उभयपक्ष के परस्पर विरोधी तर्क सुने और प्रस्तुत की गई साक्ष्य का विधिक दृष्टान्तों के प्रकाश में परिशीलन किया।

9. प्रार्थी के प्रतिनिधि का यह तर्क है कि प्रार्थी को न तो नियुक्ति पत्र और न हीं सेवासमाप्ति पत्र दिया गया है। प्रार्थी ने दिनांक 22.2.2006 को प्रार्थी की उपस्थिति और वेतन भुगतान सम्बन्धी अभिलेख प्रस्तुत करवाने का निवेदन किया था। किन्तु अधिकरण के आदेश के बाद भी अप्रार्थीगण ने उक्त प्रलेख प्रस्तुत नहीं कियें। प्रार्थी ने दिनांक 1.4.98 से 1.10.2002 तक सतत कार्य किया है। यदि कर्मकार सतत रूप से एक वर्ष से अधिक तक कार्य कर चुका हो तो अधिनियम की धारा 25 (बी) के उपबंध प्रयोज्य नहीं होते। कर्मकार ने यदि किसी भी एक वर्ष में 240 दिन से अधिक कार्य किया हो तो वह अधिनियम की धारा 25 (एफ) के अन्तर्गत संरक्षण पाने का अधिकारी हैं। चूंकि कोई नियुक्ति पत्र जारी नहीं किया गया इसलिये विपक्षी पर यह दायित्व अन्तरित हो गया है कि वह प्रार्थी को नियुक्ति न किया जाना प्रमाणित करें। प्रदर्श डब्ल्यू–2 विपक्षी का पत्र है जिसमें प्रार्थी को वर्ष 2000–2001 में 216 दिन कार्य करने के परिणामस्वरूप भुगतान किया गया है इस अवधि में साप्ताहिक अवकाशों को जोडने पर यह अवधी 240 दिन से अधिक, 252 हो जाती है। विपक्षी द्वारा प्रस्तुत तालिका एम 1 से ही प्रार्थी का 356 दिन कार्यरत होना प्रमाणित होता है। प्रार्थी से 7 घण्टे दैनिक कार्य करवाना विपक्षी साक्षी फूलचन्द मीणा ने स्वीकार किया है। इस प्रकार प्रार्थी को अंशकालीन कर्मचारी नहीं कहा जा सकता। अप्रार्थीगण ने कोई वरिष्ठता सूची भी नहीं बनाई जो आदेशात्मक प्रावधान है। इसलिये विपक्षी के विरूद्ध प्रतिकूल उपधारणा करते हुए प्रार्थी द्वारा सतत एक वर्ष से अधिक निरन्तर सेवा पूर्ण करने के आधार पर दिनांक 1.10.2002 को की गई मौखिक सेवासमाप्ति अवैध छंटनी घोषित की जावें और प्रार्थी को समस्त परिलाभ प्रदान किये जावें। उन्होनें अपने तर्क के समर्थन में निम्नांकित न्यायिक दृष्टान्त प्रस्तुत किये है :–

(1) 2016 (151) FLR -995 मैंनेजर मुस्लिम मुसाफिर खाना मोती डूंगरी जयपुर बनाम जहीर खान।

(2) 2010 (124) FLR - 285 राज. एग्री.यूनिवर्सिटी बनाम इंडस्ट्रीयल ट्रिब्यूनल।

(3) 1995 (1) RLR - 704 चीफ इंजी. इरीगेशन बनाम कमलेश व अन्य ।

(4) 2012 (134) FLR - 1082 महबूब बनाम एक्जी. इंजी. एग्री. कंस्ट्रक्शन डिवीजन नागपुर।

(5) 2002 LAB- IC - 2897 सूरजपाल सिंह बनाम पी.ओ. लेबर कोर्ट।

(6) 2006 LAB- IC - 56 रामकिशन गुर्जर/स्टेट ऑफ राजस्थान।

(7) 2008 (149) FLR -398 डिवी. मैने. न्यू इंडिया एश्योरेंस कं./ए. संकरलिंगम।

(8) 2012 (135) FLR -847 आराम सैनी/पी.ओ. सी.जी.आई. ट्रिब्यूनल।

(9) 2016 (1) SCC (L&S) - 546 गोरीशंकर/स्टेट ऑफ राजस्थान।

(10) 2010 LAB- IC - 1089 डायरेक्टर फिश. टर्मि. डिवीजन/भीखूभाई मेघजी भाई चावड़ा।

(11) 2005 (3) WLC - 430 मैने. मित्तल स्टील मैन्यू. कं./चौथाराम व अन्य ।

(12) 2006 SCC (L&S) - 574 चीफ सैक्रेट्री हरयाणा/चेतराम।

(13) 2015 (145) FLR - 425 अजयपाल सिंह/हरयाणा वेयरहाउसिंग कार्पोरेशन।

(14) 2003 (3) RLW - 1966 स्टेट ऑफ राजस्थान/श्री महेन्द्र जोशी व अन्य।

(15) AIR - 2004 SCC - 4282 कृष्णाबहादुर/मै. पूर्णा थियेटर व अन्य।

(16) DB SPE APPEAL (Writ) no.1551/2012 decision dt.9-1-2013 यू.को. बैंक/नरेन्द्र कुमार शर्मा।

(17) 2020 LLR - 24 स्टेट ऑफ एम.पी./किरपाराम।

(18) 2013 (139) FLR – 541 दीपाली गुंडु सरवासे/कांति जूनियर अध्या. महाविद्यालय व अन्य।

10. अप्रार्थीगण के अभिभाषक ने अपने लिखित एवं मौखिक तर्कों में यह कहा है कि विपक्षी के अधीन 240 दिन से अधिक लगातार सेवारत रहने का तथ्य प्रमाणित करने का सिद्धिभार प्रार्थी स्वंय पर ही है। प्रार्थी ने स्वीकार किया है कि 240 दिन से अधिक सेवा करने का कोई प्रलेखीय प्रमाण उसने प्रस्तुत नहीं किया है। प्रार्थी की नियुक्ति के सम्बन्ध में विपक्षी साक्षी ने यह कहा है कि प्रार्थी की नियुक्ति बैंक हेतु निर्धारित प्रकिया के अन्तर्गत नहीं की गई। प्रार्थी ने किसी भी वर्ष में 240 दिन से अधिक कार्य नहीं किया। उसके द्वारा किये गये कार्य का सम्पूर्ण भुगतान हो जाना प्रार्थी ने भी माना है। उनका यह भी तर्क है कि प्रार्थी को आकस्मिक कार्य की पूर्ति के लिये निश्चित अवधि हेतु संविदा पर नियुक्ति दी गई थी। प्रार्थी ने एक वर्ष से अधिक लगातार सेवा करना भी प्रमाणित नहीं किया है। इसलिये कार्य की अवधि पूर्ण हो जाने पर अधिनियम की धारा 2 (oo) (bb) के प्रावधान के अन्तर्गत प्रार्थी की सेवा समाप्त हो गयी और यह छंटनी नहीं मानी जा सकती है। इस स्थिति में प्रार्थी को कोई नोटिस, नोटिस वेतन अथवा छंटनी मुआवजा भुगतान की आवश्यकता नहीं रहती है। अधिनियम की धारा 25 (बी) (2) के अंतर्गत सेवासमाप्ति के तुरन्त पूर्व एक कैलेण्डर वर्ष की अवधि में 240 दिन की सेवा प्रमाणित करना प्रार्थी का ही दायित्व था जिसे प्रार्थी ने उन्मोचित नहीं किया है। अतः प्रार्थी कोई अनुतोष पाने का अधिकारी नहीं है। उन्होनें अपने तर्क के समर्थन में निम्नांकित न्यायिक दृष्टान्त प्रस्तुत किये हैं :–

(1) अपील (सिविल) 1270/2006 निर्णय तिथि 24.2.2006

ब्रांच मैनेजर एम.पी. स्टेट एग्रो./श्री एस.सी. पांडेय

(2) सैक्रेट्री स्टेट ऑफ कर्नाटक/उमादेवी अपील (सिविल) 3595–3612 1999 निर्णय तिथि 10.4.2006

(3) रेंज फोरेस्ट ऑफिसर/एस.टी. हादीमनी अपील (सिविल) 1283/2007 निर्णय तिथि 15.2.2002

(4) भाऊराव सेलोकर/एकजी. इंजीनियर भंडारा (2004) 106 बीओ एम. एल. आर. 914

(5) 2018 LLR - 1077 मोतीचंद/सीनि. डिवी. मैनेजर एल.आई.सी।

11. उभयपक्ष के तर्कों एवं विधिक दृष्टान्तों में पारित विधि के प्रकाश में साक्ष्य का परिशीलन करने पर निम्नलिखित विचारणीय बिन्दु उत्पन्न हुए है जिन पर क्रमिक निर्णय इस प्रकार है :–

1. क्या प्रार्थी ने दिनांक 1.14.98 से 1.2.2010 तक विपक्षी के अधीन लगातार एक वर्ष से अधिक सेवा की है? इसलिये अधिनियम की धारा 25 (बी) (2) के प्रावधान के अनुसार सेवासमाप्ति के पूर्ववर्ति एक कैलेण्डर वर्ष में 240 दिन से अधिक श्रमिक द्वारा कार्य करने का तथ्य प्रमाणित करना आवश्यक नहीं है..... प्रार्थी

2. क्या प्रार्थी की सेवासमाप्ति के पश्चात उससे कनिष्ठ व्यक्तियों को सेवा में रखते हुए विपक्षी ने उन्हें नियमित कर दिया। इस प्रकार अप्रार्थीगण द्वारा अनुचित श्रम अभ्यास किया गया..... प्रार्थी

3. अनुतोष ?

12- fopkj.k.kqa fcUnqvksa ij fu"d"kZ %&

प्रार्थी ने अपने दावे के अभिकथन के चरण सं. 4 में यह कहा है कि उसने दिनांक 01.04.1998 से 31.3.2002 तक विपक्षी की हिन्डोन विस्तार पटल नई मण्डी शाखा में तथा दिनांक 1.4.2002 से 30.9.2002 तक कंचनपुर शाखा में अवकाशों एवं रविवारों को छोडकर लगातार कार्य किया। अप्रार्थीगण ने अपने पैरावाईज वादोत्तर के चरण सं. 4 में इस कथन का कोई स्पष्ट खण्डन न करते हुए तथ्यों को यह कहकर अस्वीकार किया है कि "तथ्य जिस प्रकार अंकित किये हैं, वह अस्वीकार हैं" आगे कहा है कि वास्तविकता यह है कि प्रार्थी श्रमिक ने कभी भी 240 दिन कार्य नहीं किया। विपक्षी ने आकस्मिकता के आधार पर जब जब आवश्यकता हुई, प्रार्थी को श्रमिक के रूप में रखना तो स्वीकार किया है किन्तु उस निश्चित अवधि या काल खण्ड का वर्णन नहीं किया है, जब–जब उन्होंने प्रार्थी को आवश्यकता होने पर

आकस्मिक कार्य हेतु रखा। इस प्रकार प्रथम दृष्टया ही अप्रार्थी का वादोत्तर प्रार्थी की सेवा अवधि के सम्बन्ध में वाग्छलपूर्ण अभिवचन प्रकट होता है। जिसे स्वीकारोक्ति की परिभाषा में रखा जा सकता है।

13. अप्रार्थी ने अपनी साक्ष्य में जिन साक्षीगण को परीक्षित किया है उनमें से एक अशोक कुमार गोयल मुख्य प्रबंधक है जो कहते हैं कि प्रार्थी ने फरवरी 1999 से मार्च 2002 तक कुल 356 दिन कार्य किया है। दूसरे साक्षी श्री फूलचन्द मीणा ने अपने कथन में प्रार्थी द्वारा अप्रेल 2002 से अक्टूबर 2002 तक 140 दिन कार्य किया जाना कहा है। इस प्रकार यह स्पष्ट है कि फरवरी 1999 से अक्टूबर 2002 तक अप्रार्थी ने लगातार अप्रार्थी के अधीन कार्य किया है। रविवारीय एवं अन्य अवकाश के दिनों को छोडकर प्रार्थी की सेवा में किसी अन्य कारण से कोई व्यवधान या अवरोध आने के संबंध में विपक्षी ने स्पष्ट अभिवचन ही नहीं किया है। प्रतिपरीक्षा में विपक्षी साक्षी अशोक कुमार गोयल का कथन है कि वर्ष 2000– 2001 में प्रार्थी ने 216 दिन वास्तविक कार्य किया। इस अवधि में अवकाश एवं रविवार के दिन सम्मिलित हैं या नहीं वह नहीं कह सकता है। माननीय राज. उच्च न्यायालय ने रामकिशन गुर्जर बनाम स्टेट आफ राजस्थान के निर्णय में यह अधिमत व्यक्त किया है कि सेवा अवधि की गणना करते समय रविवारों को भी वास्तविक कार्य दिवस माना जावें। इसी सन्दर्भ में प्रदर्श डब्ल्यू–2 विपक्षी के पत्र के अवलोकन से यह पुष्ट होता है कि प्रार्थी को वर्ष 2000–2001 में 216 दिन कार्य करने का पारिश्रमिक 12,960 रूपये भुगतान किया गया है। जिसमें रविवारीय व अन्य घोषित अवकाश सम्मिलित नहीं है क्योंकि विपक्षी साक्षी ने 216 दिन वास्तविक कार्य का भुगतान किया जाना स्वीकार किया है।

14. यहां यह उल्लेखनीय है कि प्रार्थी के प्रार्थना पत्र दिनांक 22.2.2006 को स्वीकार कर इस अधिकरण ने दिनांक 21.2.2011 को विपक्षी को दिनांक 01.04.1998 से 31.3.2002 तक की अवधि के प्रार्थी को किये गये भुगतान के डेबिट वाउचर्स व कैश बुक प्रस्तुत करने का आदेश दिया था। जिसके अनुपालन में विपक्षी ने 21.9.2011 को कतिपय प्रलेखों की फोटो प्रतियाँ प्रस्तुत की हैं। जिसमें प्रदर्श–एम 2 पत्र दिनांक 16.4.2010 भी है जिसमें अप्रेल 2002 से अक्टूबर 2002 तक प्रार्थी द्वारा 140 दिन कार्य करना तथा प्रतिदिन 7 घण्टे कार्य करना भी अंकित है। प्रदर्श–एम 3 पत्र दि. 3.10.2002 को विपक्षी ने वरिष्ठ शाखा प्रबंधक को लिखा है। इस पत्र में वर्ष 2002–2003 में प्रार्थी द्वारा 199 दिन कार्य करना दर्शाया गया है और इस वर्ष के बोनस के रूप में प्रार्थी को 16070/ रूपये भुगतान करने की अनुशंसा की है। वित्तीय वर्ष की गणना 1 अप्रेल से आगामी वर्ष के 31 मार्च तक की जाती है। चूंकि प्रार्थी ने दिनांक 01.10.2002 तक ही कार्य किया है। इसलिये वित्तीय वर्ष 2002–2003 में 1 अप्रेल से 1 अक्टूबर तक दिनों की गणना करने पर 184 दिन होते है। यह स्पष्ट नहीं है कि इस वित्तीय वर्ष में प्रदर्श–एम 3 पत्र में 199 दिन प्रार्थी के कार्य दिवस कैसे संगणित किये गये हैं। साक्ष्य के इस विवेचन से प्रार्थी का 1999 से 1.10.2002 तक बिना किसी व्यवधान के सेवासमाप्ति तक सेवारत होना स्पष्ट रूप से प्रमाणित होता है। विपक्षी ने अधिकरण के आदेशानुसार दिनांक 01.04.1998 से 31.3.2002 तक के डेबिट वाउचर्स और कैश बुक प्रस्तुत न करते हुए प्रदर्श–एम 1 से 6 तक प्रलेख प्रस्तुत किये है। शेष प्रलेखों को प्रस्तुत न करने के सम्बन्ध में कोई तथ्यात्मक शपथ पत्र प्रस्तुत करते हुए स्थिति को स्पष्ट भी नहीं किया है।

15. माननीय सर्वोच्च न्यायालय ने अपने निर्णय गौरी शंकर बनाम स्टेट आफ राजस्थान, डायरेक्ट फिशरीज टर्मिनल डिवीजन बनाम भीखू भाई मेघ जी भाई चावड़ा तथा माननीय राजस्थान उच्च न्यायालय ने मैनेजर मित्तल स्टील मैन्यूफैक्चरिंग कम्पनी बनाम चौथा राम में यह मार्गदर्शन दिया है कि जब विपक्षी नियोजक द्वारा उपस्थिति एवं वेतन भुगतान का अभिलेख न्यायालय द्वारा आदेशित करने के उपरान्त भी प्रस्तुत नहीं किया गया हो तो नियोजक के विरूद्ध प्रतिकूल उपधारणा करते हुए प्रार्थी के पक्ष को स्वीकार किया जाना विधि सम्मत है। इन निर्णयों के प्रकाश में विपक्षी के विरूद्ध यह प्रतिकूल उपधारणा किया जाना उचित है कि यदि यह आदेशित अवधि के डेबिट वाउचर्स व कैश बुक आदि प्रलेख प्रस्तुत कर देता तो प्रार्थी का उक्त अवधि में निरन्तर सेवा में रहना प्रमाणित होता।

16. इस विवेचन से यह स्पष्ट होता है कि प्रार्थी अधिनियम की धारा 25 बी (1) के अनुसार सेवासमाप्ति से पूर्व विपक्षी की सेवा में प्रलेखीय साक्ष्य के आधार पर अबाध रूप से वर्ष अप्रेल 98 से अक्टूबर 2002 तक जो कि एक वर्ष की अवधि से कही अधिक है, निरन्तर कार्यरत रहा है। जिन दिनों का भुगतान विपक्षी द्वारा प्रार्थी को नहीं किया गया वे रविवार, घोषित अवकाश, अस्वस्थता या अन्य वैध कारण से नहीं किया गया, जो सेवा की निरनतरता में अवरोध नहीं कहा जा सकता। माननीय राज. उच्च न्यायालय ने अपने निर्णय मैनेजर मुस्लिम मुसाफिर खाना मोती डूंगरी जयपुर बनाम जहीर खान, राजस्थान एग्रीकल्चरल यूनिवर्सिटी बनाम इण्डस्ट्रीयल ट्रिब्यूनल तथा माननीय दिल्ली उच्च न्यायालय ने अपने निर्णय सूरजपालसिंह व अन्य बनाम पी.ओ. लेबर कोर्ट, राज. उच्च न्यायालय ने निर्णय चीफ इन्जिनियर इरिगेशन बनाम कमलेश व अन्य तथा बम्बई उच्च न्यायालय ने अपने निर्णय महबूब बनाम एग्जिक्यूटिव इन्जिनियर ए.सी. डिविजन नागपुर में यह अधिमत व्यक्त किया है कि अधिनियम की धारा 25 बी (2) के प्रावधान वही प्रयोज्य/प्रवर्तित होंगे जहां कर्मकार ने 1 वर्ष की सतत सेवा पूर्ण नहीं की हो ओर मात्र एक कैलेण्डर वर्ष में 240 दिन से अधिक सेवा की हो। जहां कर्मकार लगातार 1 वर्ष से अधिक सेवा में कार्यरत रहा हों वहां अधिनियम की धारा 25 बी (2) के प्रावधान प्रयोज्य नहीं होंगे। यदि कर्मकार ने सेवा के पूर्ववर्ती किसी भी वर्ष में 240 दिन सेवा पूर्ण कर ली हो तो यह तथ्य भी अधिनियम की धारा 25 (एफ) के अन्तर्गत अवैध छंटनी के विरूद्ध संरक्षण हेतु सुसंगत होगा।

17. विपक्षी की और से रेन्ज फारेस्ट आफिसर बनाम एस.टी. हादीमनी के निर्णय में माननीय सर्वोच्च न्यायालय द्वारा पारित विधि का अवलम्ब लेते हुए यह कहा गया है कि सेवासमाप्ति के पूर्ववर्ती एक कैलेण्डर वर्ष की अवधि में 240 दिन से अधिक सेवा पूर्ण कर लेने के तथ्य को प्रमाणित करने का सिद्धिभार प्रार्थी स्वंय पर है। किन्तु पूर्वोक्त तथ्यों के प्रकाश में प्रार्थी द्वारा दिनांक 01.04.1998 से दिनांक 01.10.2002 की अवधि में चूंकि लगातार एक वर्ष से अधिक सेवा की गई है, इसलिए अधिनियम की धारा 25 बी (2) के प्रावधान प्रयोज्य नहीं माने जा सकते है। विपक्षी की और से ऐसी कोई

मार्गदर्शक विधि प्रस्तुत नहीं की गई है जिसमें कर्मकार द्वारा एक वर्ष से अधिक लगातार सेवा पूर्ण कर लिये जाने पर भी सेवासमाप्ति के पूर्ववर्ती एक कैलेण्डर वर्ष की अवधि में 240 दिन की सेवा पूर्ण कर लेने की आवश्यकता अवैध छंटनी के विरूद्ध संरक्षण हेतु प्रतिपादित की गई हो। इसलिये मैं ससम्मान इस निर्णय में पारित विधि को विपक्षी के पक्ष में सहायक नहीं पाता हूँ।

18. विपक्षी का यह तर्क भी है कि प्रार्थी को आकस्मिक कार्य की पूर्ति हेतु रखा गया था, इसलिए उक्त कार्य समाप्त होने पर स्वतः ही उसकी सेवा समाप्त हो जाती है। ऐसी नियुक्ति अधिनियम की धारा 2 (ओ.ओ.) (बी.बी.) के अपवादात्मक प्रावधान के अनुसार छंटनी के प्रावधानों से आच्छादित नहीं है। इसलिये अवैध छंटनी के विरूद्ध अधिनियम की धारा 25 (एफ) के उपबंधों का संरक्षण प्रार्थी को देय नहीं है। इस सन्दर्भ में विपक्षी ने माननीय पंजाब व हरियाणा उच्च न्यायालय के निर्णय मोतीचन्द बनाम सीनियर डिवीजन मैनेजर एलआईसी में पारित विधि का अवलम्ब लिया है। इस निर्णय में माननीय पंजाब व हरियाणा उच्च न्यायालय ने यह कहा है कि जब कर्मकार को विशिष्ट उद्देश्य एवं निश्चित अवधि के लिये रखे जाने का आदेश पारित हो तो ऐसा उददेश्य एवं अवधि समाप्त हो जाने पर कर्मकार का अनुबन्ध समाप्त हो जाता है। ऐसी सेवा के स्वतः समाप्त होने को अधिनियम की धारा 2 (ओ.ओ.) (बी.बी.) के अन्तर्गत, छंटनी नहीं माना जा सकता है। इसके विपरीत प्रार्थी ने माननीय सर्वोच्च न्यायालय द्वारा चीफ सेकेट्री हरियाणा बनाम चेतराम के निर्णय में पारित विधि को आधार बनाया है। इस निर्णय में माननीय उच्चतम न्यायालय ने यह कहा है कि जब नियोजक द्वारा सेवा अनुबन्ध का नवीनीकरण न होने सम्बन्ध में कोई प्रलेख प्रस्तुत नहीं किया गया हो, जिससे सेवा अनुबन्ध किया जाना प्रमाणित हो, तो की गई सेवासमाप्ति छंटनी ही मानी जावेगी। उल्लेखनीय है कि विपक्षी ने प्रार्थी की नियुक्ति किसी विशिष्ट उद्देश्य या नियत अवधि तक अनुबन्ध के आधार पर किया जाना किसी प्रलेखीय साक्ष्य से प्रमाणित ही नहीं किया है। इसलिये प्रार्थी की सेवासमाप्ति छंटनी ही प्रमाणित होती है।

19. प्रार्थी पक्ष द्वारा प्रस्तुत न्यायिक दृष्टान्तों में पारित विधि इस विवाद के तथ्यों पर प्रभावी एवं मार्गदर्शक है। अधिनियम की धारा 25 बी (1) के अर्न्तगत प्रार्थी ने 1 वर्ष से अधिक सतत सेवा दिनांक 01.04.1998 से दिनांक 01.10. 2002 के मध्य विपक्षी के अधीन किया जाना प्रमाणित किया है। इसलिये अधिनियम की धारा 25 बी (2) के प्रावधान आकृष्ट ही नहीं होते है। इस स्थिति में सेवासमाप्ति के पूर्ववर्ती एक कैलेण्डर वर्ष की अवधि में 240 दिन की सेवा पूर्ण कर लेने का तथ्य प्रार्थी द्वारा प्रमाणित किया जाना असंगत व अनावश्यक है। विपक्षी की यह स्वीकृति है कि प्रार्थी को सेवासमाप्ति के पूर्व 1 माह का नोटिस या नोटिस के अभाव में नोटिस वेतन तथा छंटनी मुआवजा का भुगतान नहीं किया गया है। इसलिये विपक्षी द्वारा प्रार्थी को सेवामुक्त करने के पूर्व अधिनियम की धारा 25 (एफ) के प्रावधान का अनुपालन नहीं करने के कारण दिनांक 01.10.2002 को की गई प्रार्थी की सेवासमाप्ति अवैध प्रमाणित होती है। अतः यह बिन्दु प्रार्थी के पक्ष में निर्णीत किया जाता है।

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इस बिन्दु के सन्दर्भ में प्रार्थी ने अपने साक्ष्य में यह कहा है कि उसकी सेवासमाप्ति किये जाने के पश्चात नये श्रमिक महेश चन्द्र सैनी को दैनिक वेतन पर विपक्षी ने रखा है तथा मुकेश कुमार पुत्र श्री बाबूलाल एवं यादराम महावर श्रमिक प्रार्थी से कनिष्ठ थे, जिन्हें नियमित कर दिया गया। उल्लेखनीय है कि प्रार्थी ने अपनी साक्ष्य में महेश चन्द्र सैनी की नियुक्ति के सम्बन्ध में न तो कोई प्रलेख प्रदर्शित किया है और न हीं विपक्षी से प्रस्तुत करवाने का निवेदन किया है। इसी प्रकार मुकेश कुमार पुत्र श्री बाबूलाल तथा यादराम महावर नामक श्रमिकों का प्रार्थी से कनिष्ठ होना और उनको नियमित कर दिये जाने के तथ्य भी प्रार्थी ने किसी प्रलेखीय साक्ष्य से प्रमाणित नहीं किये हैं। अन्य आकस्मिक एवं दैनिक वेतन भोगी श्रमिकों का प्रार्थी की सेवासमाप्ति के उपरान्त विपक्षी के अधीन कार्यरत रहना भी प्रार्थी की साक्ष्य से प्रमाणित नहीं हुआ है इसलिये विपक्षी द्वारा श्रमिकों की वरिष्ठता सूची के संधारण का अवसर ही उत्पन्न नहीं हुआ है। उपर्युक्त विवेचन के उपरान्त यह बिंदु प्रार्थी की साक्ष्य के अभाव में प्रार्थी के विरूद्ध निर्णीत किया जाता है।

vuqrks"k& विचारणीय बिन्दु संख्या 1 प्रार्थी के पक्ष में निर्णीत होने पर प्रार्थी की दिनांक 01.10.2002 को की गई सेवासमाप्ति अधिनियम की धारा 25 (एफ) के प्रावधानों का अनुपालन न किये जाने से अवैध प्रमाणित हुई है। प्रार्थी का निवेदन है कि प्रार्थी को विगत वेतन एवं समस्त परिलाभों सहित सेवा में पुनः स्थापित किया जावें। उन्होनें अपने तर्क के समर्थन में यूकों बैंक बनाम नरेन्द्र कुमार शर्मा, स्टेट ऑफ एम.पी. बनाम किरपाराम तथा दिपाली गुन्डू सर्वासे बनाम कान्ति जूनियर अध्यापक महाविद्यालय में माननीय उच्चतम न्यायालय राजस्थान उच्च न्यायालय एवं मध्य प्रदेश उच्च न्यायालय द्वारा पारित विधि का अवलम्ब लिया है।

20. विपक्षी का यह तर्क है कि प्रार्थी की नियुक्ति दैनिक वेतन भोगी आकस्मिक श्रमिक के पद पर की गई थी, वह किसी चयन प्रक्रिया एवं सेवा नियमों के अधीन नियुक्त नहीं किया गया इसलिये उसे पुनः सेवा में नियोजित किया जाना उचित नहीं होगा। उन्होनें अपने तर्क के समर्थन में ब्रान्च मैनेजर एम.पी. स्टेट एग्रो बनाम श्री एस.सी.पाण्डे तथा सेकेट्री स्टेट आफ कर्नाटक बनाम उमादेवी व अन्य में माननीय सर्वोच्च न्यायालय द्वारा पारित विधि का अवलम्ब लिया। मैनें उभयपक्ष के तर्कों पर विचार किया। इस प्रकरण में यह तथ्य तो प्रमाणित है कि प्रार्थी को दैनिक वेतन भोगी श्रमिक के रूप में विपक्षी के अधीन विहित चयन प्रक्रिया न अपनाते हुए नियुक्त किया गया। उसकी नियुक्ति किसी रिक्त स्वीकृत पद के विरूद्ध भी नहीं की गई। उसका सेवाकाल लगभग साढ़े तीन वर्ष का रहा है। प्रार्थी ने सेवासमाप्ति के उपरान्त स्वंय को बेरोजगार होना कहा है किन्तु इस तथ्य का खण्डन विपक्षी ने न तो अपने अभिवचन में किया और न हीं साक्ष्य में विपक्षी ने यह प्रमाणित किया है कि प्रार्थी सेवासमाप्ति के उपरान्त किसी लाभ के पद पर धर्नाजन कर रहा था। इस स्थिति में प्रार्थी को विगत वेतन दिलवाया जाना आवश्यक प्रतीत होता है। प्रार्थी को, उसके द्वारा की गई सेवा की अवधि

एवं नियुक्ति की प्रकृति को दृष्टिगत रखते हुए सेवा में पुनः पदस्थापित किया जाना न्यायोचित नहीं है। साक्ष्य के परिशीलन से प्रार्थी की सेवासमाप्ति अनुचित श्रम अभ्यास के रूप में होना भी प्रमाणित नहीं हुई है। माननीय सर्वोच्च न्यायालय ने अपने निर्णय सुपरीडेण्टेड टेलीग्राफ (ट्रेफिक) भोपाल बनाम सन्तोष कुमार सील व अन्य (स्वंय अधिकरण द्वारा) में यह मार्गदर्शन दिया है कि छंटनी के अवैध प्रमाणित होने पर सेवा में पुनः स्थापन निरंतरता व विगत वेतन का अनुतोष दिया जाना आवश्यक नहीं है। ऐसी स्थिति में आर्थिक प्रतिकर दिलवाया जाना भी उचित होता है। जब कर्मकार 2 या तीन वर्ष की सेवा करने के उपरान्त अवैध रूप से सेवामुक्त किया गया हो तो उसे सेवा में पुनः स्थापन के स्थान पर समुचित आर्थिक प्रतिकर दिये जाने से भी न्यायहित साधन होगा। इस निर्णय के प्रकाश में प्रार्थी की सेवासमाप्ति को अवैध घोषित करते हुए प्रार्थी को पुनः सेवा मे पदस्थापित करने के स्थान पर समुचित आर्थिक प्रतिकर एकमुश्त दिलवाया जाना उचित प्रतीत होता है।

21. अतः विपक्षी प्रबंधन द्वारा दिनांक 01.10.2002 को की गई प्रार्थी की सेवासमाप्ति अवैध घोषित करते हुए प्रार्थी को एकमुश्त प्रतिकर के रूप में 75,000/–रूपये (अक्षरे पिचहत्तर हजार रूपये मात्र) विपक्षी से दिलाये जाने का आदेश दिया जाता है। विपक्षी इस राशि का भुगतान तीन माह में प्रार्थी को करें अन्यथा प्रार्थी इस राशि पर भुगतान होने तक 9 प्रतिशत वार्षिक ब्याज दर से ब्याज पाने का भी अधिकारी होगा।

22. श्रम मंत्रालय भारत सरकार द्वारा इस अधिकरण को न्यायनिर्णयन हेतु प्रेषित विवाद का उत्तर उपर्युक्तानुसार दिया जाता है।

23. अधिनिर्णय की प्रतिलिपि केन्द्रीय सरकार को औद्योगिक विवाद अधिनियम 1947 की धारा 17 (1) के अन्तर्गत प्रकाशनार्थ प्रेषित की जावे।

राधा मोहन चतुर्वेदी, पीठासीन अधिकारी

नई दिल्ली, 30 जून, 2020

d k- v k- 492.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक आफ महाराष्ट्र के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ सं. 34/2013-14) को प्रकाशित करती है जो केन्द्रीय सरकार को 30.06.2020 को प्राप्त हुआ था।

[सं. एल-12012/34/2013-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 30th June, 2020

S.O. 492.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 34/2013-14) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, NAGPUR as shown in the Annexure, in the industrial dispute between the management of Bank of Maharashtra, and their workmen, received by the Central Government on 30.06.2020.

[No. L-12012/34/2013-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE SHRI S.S. GARG, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/34/2013-14 Date: 13.02.2020

Party No.1 ; The Regional Manager,
Bank of Maharashtra, Regional Office,
Nagpur Region, Mahabank Bhawan,
Sitabuldi, Nagpur – 440012.

V/s

Party No.2 : Shri Raju Nagorao Pathrabe,
Plot No. 108, Shree Colony,
Shahu Layout, Hudkeshwar Road,
Nagpur – 440034.

AWARD

(**Dated:** 13th February, 2020)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Bank of Maharashtra and their workman, Shri Raju Nagorao Pathrabe for adjudication, as per letter **No.L-12012/34/2013 – IR (B-II) dated 07.06.2013,** with the following schedule:-

> **"Whether the action of the management of Bank of Maharashtra, Nagpur in imposing the penalty of "compulsory retirement from service with superannuating benefits & without disqualification from future employment" on Shri Raju Nagorao Pathrabe, Ex-Clerk of Mahal Branch, Nagpur vide order dated 18.05.2011, is just, fair & legal? What relief the applicant is entitled to?"**

1. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement. In response to which, Shri S.T. Sahasrabudhe, advocate filed vakalatnama and Statement of Claim on behalf of the workman ("Party No. 2" in short). Shri R.N. Sen and Smt. Komal Bajaj, advocates filed joint vakalatnama for the management of Bank of Maharashtra ("Party No. 1" in short) and also filed their Written Statement.

2. On perusal of the record, it appears that, since 07.01.2016, neither the workman nor his advocate has been appearing to contest the case. On 17.12.2019, advocate for the Party No. 1/management intimated this Court that, the advocate for the Party No. 2, who was contesting the case, has already died and also filed an application for passing appropriate order, which was marked as I.A. No. 1 and order of issuing fresh notice to the Party No. 2 was also passed on that day and the next date fixed on 13.02.2020, but on this day also, nobody appeared on behalf of the Party No. 2/workman. In my humble opinion, the workman/Party No. 2 by knowing, did not appear or contest the case. So, application I.A. No. I is allowed. Hence, it is ordered:-

ORDER

The reference is answered in the negative and against the petitioner. The petitioner is not entitled to any relief.

S. S. GARG, Presiding Officer

नई दिल्ली, 30 जून, 2020

d k vk 493.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सैन्ट्रल बैंक आफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ सं. 06/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 30.06.2020 को प्राप्त हुआ था।

[सं. एल-12012/56/2010-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 30th June, 2020

S.O. 493.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 06/2011) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of Central Bank of India and their workmen, received by the Central Government on 30.06.2020.

[No. L-12012/56/2010-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 28TH MAY, 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 06/2011

I Party
Sh. K. M. Ramnjanappa,
S/o Late Muniyappa,
R/at Kithiganur Colony,
K.R. Puram Post,
Bangalore – 560036.

II Party
The General Manager (HR),
Regional Office,
Central Bank of India,
P.B. NO. 5129, No. 24,
Crescent Road,
Bangalore – 560001.

Appearance

Advocate for I Party : Mr. K. Srinivasa

Advocate for II Party : Mr. Pradeep S. Sawkar

AWARD

The Central Government vide Order No. L-12012/56/2010-IR(B-II) dated 23.02.2011 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

> **"Whether the action of the management of Central Bank of India, Bangalore in removing Sh. K. M. Ramanjanappa from the services of the Bank, with superannuation benefits without disqualification from future employment, w.e.f. 01.01.2009, is just and proper? If not, what relief the workman is entitled to?"**

1. The 1st Party workman is the former employee of the 2nd Party having joined the service as sweeper on 10.05.1990 and on promotion was working as a Daftary at the time of his removal from service by the 2nd Party on 01.01.2009.

The fact is, while working at Halagur, he remained absent on health ground in the year 2003 and was sanctioned medical leave. Again, he remained absent on health ground during the year 2007 and 2008; he went on leave but leave was not sanctioned on his leave applications. The 2nd Party issued Charge Sheet followed by Domestic Enquiry; the Enquiry Officer found him guilty of charges; acting on the Enquiry Report, the Disciplinary Authority passed the Punishment Order.

In his statement, the 1st Party workman claims that the Domestic Enquiry was not held in accordance with the rules and procedure applicable to the employees of the 2nd Party. He was not issued second show cause notice with Enquiry Report; he was not given personal hearing; the Punishment Order imposed is perverse and biased. It is an illegal, arbitrary and unjust Order. He had sufficient leave to his credit and there was no hindrance for the 2nd Party to sanction medical leave. He has not committed misconduct as alleged. He is not gainfully employed and has no other alternative source of income.

2. The 2nd Party in their statement denied the allegations made against the Enquiry Officer, Enquiry Report and the legality of the Punishment Order.

It is contended that, during the Domestic Enquiry he admitted the charges levelled against him. He had no sufficient leave to his credit; he failed to respond to the letters given by the Branch informing about his unauthorized absence; he replied to a reminder issued by the Regional Office enclosing some medical certificate; he had not responded to the Branch communication asking him to report to duty; the allegations were proved during the Enquiry; he had acknowledged the receipt of report of the Enquiry Officer along with the advice to make his submission on the Enquiry Report; he failed to make any submission; unauthorised absence of 30 days constitutes major misconduct as per clause 5(p) of the Memorandum of Settlement dated 10.04.2002. The Disciplinary Authority concurred with the findings of Enquiry Officer and proposed to award the consolidated penalty of punishment. He was advised to show-cause why the punishment should not be implicited, but he did not make his submission. Accordingly, the punishment Order is passed on 01.01.2009, he preferred appeal before the Appellate Authority belatedly and his appeal was not entertained. During the Domestic Enquiry all opportunities were given to him.

3. On the rival pleadings, a Preliminary Issue was raised regarding the correctness and fairness of the Domestic Enquiry that preceded the Punishment Order. After a full-fledged trial, the issue is answered, upholding the validity of the Domestic Enquiry.

4. The 1st Party workman before this Tribunal has adduced evidence alleging that he is victimised for Union activities and also discriminated from other employees who are imposed lesser punishment on similar allegations. He further claims that, he is not gainfully employed from the date of his removal.

During the course of cross examination he stated that, he was ordinary member of the Trade Union AIBEA; he has not worked anytime against the Management. He revealed the names of two employees who were charged with the allegations of unauthorised absence and imposed minor punishment.

5. The allegation against the workman in the charge sheet dated 15.07.2008;

(i) Sh. K. M. Ramanjanappa remained absent from duties on 05.11.2007, 13.11.2007, 29.11.2007, 13.12.2007 and 19.12.2007 without having any leave to his credit and without proper grounds. He has mentioned the reason for remaining absent as sickness, but not submitted any Medical Certificate in support of his plea.

The above acts of Sh. Ramanjanappa constitute misconduct under Clause 7(a) of Memorandum of Settlement dated 10.04.2002 on Disciplinary action and procedure for workmen in Banks.

(ii) Sh. K. M. Ramanjanappa, remained absent from duties from 14.09.2007 to 31.10.2007. Further, he has been absenting from duties from 08.03.2008 till date without any intimation to the Bank. He has remained unauthorizedly absent continuously for a period exceeding 30 days, on both the occasions.

These acts of Sh. Ramanjanappa constitute major misconduct as per Clause 5(p) of Memorandum of Settlement dated 10.04.2002 on Disciplinary Action and Procedure for workmen in Banks.

6. The 1st Party participated in the enquiry, without opting for the assistance of the Defence Representative and unequivocally accepted the charges as alleged in the Charge Sheet. Thereafter, the Branch Manager of the Halagur Branch was examined as Management witness and 16 relevant documents were marked through him. The CSE did not dispute the documents and had no objections in admitting the documents as Management exhibits. He did not cross examine the witness. He has taken three days' time to submit his written argument; he was communicated with the copy of the written submission. But there was no written submission from his side.

7. The Enquiry Officer had the benefit of the original Muster Roll sheets (Ex ME-1) which corroborated the dates and period of absence. The Management witness had stated that the 1st Party was absent continuously from 08.03.2008 onwards; without obtaining prior permission or intimation to the Office; his absence was treated as unauthorised. From the extract of the Leave Record (Ex ME-2), it was proved that he did not have sufficient leave balance. The copies of the letters / memos and the memo of regional office sent to his address were marked as Ex ME-3 to Ex ME-6, EX ME-8 and Ex ME-12 and Ex ME-13. His submission to the Ex ME-8 / Reminder issued by the Regional Office was marked asEx ME-9 wherein, he had stated that he is enclosing the Medical Certificate issued by the Bowring Hospital; in fact, the Medical Certificate enclosed was from a local Ayurvedic Clinic, Halagur / Ex ME-10.

On the basis of the above, the Enquiry Officer concluded that the charges are proved. The Enquiry finding since based on the oral evidence of the Manager of the Branch supported by the undisputed documentary evidence, the enquiry findings deserve to be endorsed.

Now he is alleging that Enquiry findings and the 2nd show cause notice was not at all issued to him. It is interesting to note from the copy of the appeal memo submitted by him that he had not mentioned his postal address. It is not his case that, he was not available for service of the communications sent by the 2nd Party for any compelling reason. He has not contradicted the observations made in the body of Punishment Order that the Report of the Enquiry Officer calling upon his submissions within seven days from the date of receipt of the Report was sent to him and was acknowledged by him. It was also further observed that, the show cause notice dated 24.12.2008 with the observation of the Disciplinary Authority and the finding of Enquiry Officer indicating the proposed punishment and also scheduling a personal hearing was sent to him on 31.12.2008. In his Appeal memo he has not bothered to deny above observation of Disciplinary Authority. Without challenging the Punishment Order within the appeal period, he preferred the appeal belatedly, which is rejected. If he has received the memo issued by the Regional Office there is no reason why the other memos, show cause notice sent to his address are not received by him.

8. He has submitted his written argument, contending that his Medical Certificate is undermined by the 2nd Party. In fact, medical ground was not his defence before the Enquiry Officer. It is not only that he had submitted letter from an Ayurvedic Doctor falsely representing to have been issued by Bowring Hospital, he did not produce any documentary proof justifying his absence.

He has also further contended in his written argument that he was made to admit the charge on false assurance that would be exonerated from the charge by imposing a punishment of warning or any other minor penalty. Thus, on his own showing he admits that he has not contested the charge but failed to prove that he was lured to do so by assuring minor punishment. He assails the Punishment Order on technical ground that two separate punishments are imposed in the same Order, though there are no provisions to impose two punishments in the same Order. As such, it is clearly stated in the Charge Sheet that the first Charge constitutes misconduct under Clause 7(a) of Memorandum of Settlement dated 10.04.2002 and the second Charge constitutes major misconduct under Clause 5(p) of the same Settlement. On both charges having been proved, separate punishment contemplated under the relevant provisions is imposed. It is mischievous to say that, the 2nd Party ought to have conducted separate enquiry on both charges. The allegation of unauthorised absence is a continuous misconduct commencing form 05.11.2007 and he was intermittently absent upto 19.12.2007 on the dated mentioned in the first Charge and remained continuously absent from 14.09.2007 to 31.10.2007 and from 08.03.2008 till the date of issue of Charge Sheet, that was the second charge.

9. The 2nd Party in their written argument have denied the allegations of discrimination in the matter of imposition of punishment. It is stated Sudhrani, Clerk who the 1st Party referred to in his evidence is dismissed from service and her case is pending in this Court in CR No. 52/2009. They have further stated that another official Sh. Md. Iqbal Sharief referred by the 1st Party took VRS from the service of the 2nd Party on medical ground.

10. The 2nd Party who could have treated his continuous absence without leave or permission as Voluntary cessation of employment, granted him sufficient opportunity by framing charges so that he may reason out his absence. He cannot blame anyone else for not utilising the opportunity. It is not a fit case calling for the jurisdiction of this Tribunal under Section 11-A of the I.D Act.

AWARD

The reference is rejected.

(Dictated to o/s LDC, transcribed by her, corrected and signed by me on 28th May, 2020)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 30 जून, 2020

dk- vk- 494.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक आफ बड़ौदा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ सं. 105/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 30.06.2020 को प्राप्त हुआ था।

[सं. एल-12012/9/2011-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 30th June, 2020

S.O. 494.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 105/2011) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court, Lucknow* as shown in the Annexure, in the industrial dispute between the management of Bank of Baroda, and their workmen, received by the Central Government on 30.06.2020.

[No. L-12012/9/2011-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT LUCKNOW

PRESENT : P. K. SRIVASTAVA, PRESIDING OFFICER

I.D. No. 105/2011
Ref. No. L-12012/9/2011-IR(B-II) dated: 13.06.2011

BETWEEN :

Sh. Ashok Kumar s/o Sh. Phool Chand
H. No. 424/227-A, Mohalla Mahboobganj
Harijan Basti, Near Ravidas Park, Chowk
Lucknow.

AND

Branch Manager
Bank of Baroda, aminabad, Lucknow/
Regional Manager
Bank of Baroda, Regional Office
Second floor, 19 Way Road
Lucknow.

AWARD

1. By order No. L-12012/9/2011-IR(B-II) dated: 13.06.2011 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Sh. Ashok Kumar s/o Sh. Phool Chand, H. No. 424/227-A, Mohalla Mahboobganj, Harijan Basti, Near Ravidas Park, Chowk, Lucknow and Branch Manager, Bank of Baroda, Aminabad, Lucknow/Regional Manager, Bank of Baroda, Regional Office, Second floor, 19 Way Road, Lucknow for adjudication to this CGIT-cum-Labour Court, Lucknow.

2. The reference under adjudication is:

"WHETHER THE ACTION OF THE MANAGEMENT OF THE BANK OF BARODA, LUCKNOW IN TERMINATING THE SERVICES OF SRI ASHOK KUMAR S/O SHIR PHOOL CHAND W.E.F. 21/10/2005 IS LEGAL AND JUSTIFIED? WHAT RELIEF THE WORKMAN IS ENTITLED TO?"

3. The case of the workman, Ashok Kumar, in brief is that he was employed as daily wage labourer w.e.f. 01.05.2000 to carryout the work of peon/safai karmchari from time to time and was paid accordingly on daily wage basis on voucher. The workman has submitted that he worked with the bank continuously for more than five years but the management of the bank terminated his services 21.10.2005 without any notice or notice pay in lieu thereof or any retrenchment compensation in violation to the provisions contained in Section 25 F of the Industrial Disputes Act, 1947; and accordingly, has prayed that his termination be declared illegal and he be reinstated with consequential benefits including full back wages.

4. The management of the Bank of Baroda has filed its written statement; wherein it has submitted that the workman had been engaged by the bank due to exigencies of work of intermittent nature, purely on causal basis during year 2000 to 2005 on daily wages basis and was paid accordingly; but he never completed 240 days in any spell of his engagement. The bank has also submitted that being a public sector organization it has well defined recruitment rule/procedure for various caterories of employees and the workman had never been appointed by the Bank in any capacity; nor did he under gone any recruitment process, prescribed for the sub-staff in the Bank, as such, there was no termination of his services at any point of time as there was no relationship of employee and employer between the workman and the Bank at any point of time. The management has submitted that since the workman's engagement was casual in nature, therefore, there arises no question of termination of his services in violation of any of the provisions of the I.D. Act. Accordingly, the management has prayed that the claim of the workman be rejected being devoid of any merit.

5. The workman has filed its rejoinder; wherein it has reiterated the averments already made in the statement of claim.

6. The parties filed documents in support of their respective case and adduced oral evidence. The workman has examined himself; whereas the management examined Sri Pramod, Branch Manager in support of its case; and the parties availed opportunity to cross-examine the witnesses of each other. None turned up on

behalf of the workman to argue the case; however, the management forwarded its oral arguments in support of its case.

7. Heard learned authorized representatives of the parties at length; and perused entire evidence on record.

8. The learned counsel for the workman, Sri S. C. Mishra has submitted that the workman had been engaged to work as Peon/Sweeper on daily wage basis w.e.f. 01.05.2000 and worked as such upto 21.10.2005 when his services had been terminated without complying with the provisions of the Section 25 F of the Act. He has submitted that the workman during his service period has worked for more 240 days in each calendar year as well as in twelve months preceding his alleged termination; therefore, he is entitled for reinstatement with consequential benefits. He has relied upon:

(i) *Director, Fisheries Terminal Division vs Bhikubhai Meghajibhai Chawda 2010 (1) SCC 47.*

(ii) *Bank of Baroda vs Ghemarbhai Jarjibhai Rabari 2005 (10) SCC 792.*

(iii) *R. M. Yellatti vs Asst. Executive Engineer 2006 (1) SCC 106.*

(iv) *Sriram Industrial Enterprises Ltd. vs Mahak Singh 2007 (4) SCC 94.*

(v) *AIIMS New Delhi vs Uddal & ors. 2014 (142) DRJ 569 (Delhi HC0).*

(vi) *Decision of Hon'ble Allahabad High Court in Writ. C No. 6402 of 2002 M/s. Gangeshwar Ltd., Sharanpur vs State of U.P. & others.*

9. In rebuttal, the learned counsel of the bank, Sri Sharad Shukla, advocate has argued that the workman had never been in any capacity with the bank; hence there was no relationship of employer and employee between the bank and the workman, therefore, there arise no question of violation of any statutory provision or termination of the workman at any point of time. Moreover, he submitted that the services of the workman had been availed by the management of the bank on casual basis, intermittently during 2000 to 2005; but the workman never completed 240 days in any spell of his engagement, therefore, he is claim is liable to be rejected without any relief to the workman concerned.

10. I have given my thoughtful consideration to the rival pleadings and submissions of the parties and scanned entire evidence on record.

10. Having gone through the respective pleadings of the parties, documentary evidence relied upon by the either side, oral evidence adduced by them in support of their respective pleadings and oral as well written submission of the parties, it is the case of the parties that the workman had been engaged by the opposite parties, in exigencies, to carry out the work of casual in nature on daily wage basis and the workman was paid accordingly through payment vouchers. It is not the case of the workman that he had been a regular appointee, therefore, there is no substance in the contention of the management that the workman had never been appointed by the bank, following due Rules/procedure for recruitment and there exist no employer-employee relationship between the bank and th workman. Moreover, this Tribunal has to confine itself with the parameters of the Schedule of reference i.e. legality/illegality of the alleged termination of the workman by the bank. In this regard the workman has come up with a case that he had been engaged by the bank w.e.f. 01.05.2000 to 21.10.2005 and roughly this submission of the workman had been accepted by the bank vide para 07 and 17 of the written statement. However, the management has come up with a case that the workman never completed 240 days in any spell of his engagement and there was no termination of his services in violation to the provision of the Section 25 F of the Act.

11. It is settled law that when the workman comes forward with the case that his services have been terminated without following previsions of the section 25 F of the Act, then burden of proof heavily lies upon him to prove that he had worked for 240 days in the preceding twelve months from the alleged date of his termination. However in the case in hand the workman has filed numerous documents and moved an application, W-12, duly supported with an affidavit, for summoning documents, in possession of the opposite parties to prove the averments made by him in statement of claim. When the management did not file any objection to W-12, the application for summoning was allowed vide order dated 25.09.2012; with direction to the management to file documents detailed in para 1 (ii) of the application W-12 i.e. profit & loss, sundry charges head alonwith the concerned vouchers of Ashok Kumar from Oct, 2000 to 2005 with regard to the payment made to the workman. The management failed to comply with the order dated 25.09.2012; accordingly, the workman filed statement of sundry account of the bank w.e.f. 02.04.2005 to 27.12.2005 and photo copy of vouchers. From perusal of the sundry statement it is clear that the workman had been paid different amounts on different occasions and also the payment voucher show that the wrokamn had been paid towards labour charges and these photocopies relied upon by the workman could be taken into count, as

secondary evidence, after drawing adverse inference against the bank for non-compliance of the order dated 25.09.2012 of this Tribunal.

12. The management witness, during his cross-examination has proved the photocopy of Profit & Loss Account, paper No. 11/12 to 11/143, pertaining to year 2000 to 2005, which goes to proved the case of the workman that the workman has been engaged by the management of bank of baroda on casual basis to carryout various petty works, in exigencies; and was paid accordingly, through payment vouchers on daily rates. Moreover, the management witness during his cross-examination has stated on oath that the workman has worked in the bank as per need hand been paid accordingly. Hon'ble Gujrat High Court in *Director, Fisheries Terminal Division vs. Bhakubhai Meghajibhai Chavda 2010 AIR SCW 542*; has observed that for proving 240 days' continuous working, the workman would have difficulty in having access to all official documents, muster rolls etc., in connection with his service, therefore, the burden of proof shifts to the employer to prove that he did not complete 240 days of service in requisite period to constitute continuous service; but the management of the Bank of Baroda has failed to discharge the burden lied upon it. The workman has neither pleaded nor proved that he had been regularly appointed by the bank or any formal appointment letter had ever been issued to the workman; rather he has pleaded that there has been engagement as casual labourer and has succeeded to sustain the same.

13. Thus, there is ample evidence to record this finding that the workman had actually worked for more than 240 days in preceding twelve months from the date of his alleged termination i.e. 21.10.2005; and oral termination of his services, without any notice or notice pay in lieu thereof was in violation of the section 25 F of the I.D. Act, thus, the alleged termination of the services of the workman was neither legal nor justified.

14. Now, it is to be considered as to whether the workman is entitled for reinstatement. From the evidence produced by the workman it is not proved that his appointment was as a regular worker. Admittedly, the services of the workman were terminated orally on 19.01.1999. In *Haryana Roadways vs. Rudhan Singh (2005) 5 SCC 591; 2005 SCC (L&S) 716* Hon'ble Apex Court while considering the question regarding award of back wages has observed:

> ***"There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of section 25 F of the Act, entire back wages should be awarded ..... However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which required to be taken into consideration, is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calander year."***

15. In *2008 (119) FLR 877 Deepak Ganpat Tari vs. N.E. Theater Pvt. Ltd.* Hon'ble Bombay High Court relying on the Hon'ble Apex Court's judgment in *2008 (117) FLR 1086 (SC) A P V K Brahmandandam 2008 (118) FLR 376 (SC) Telephone DM vs. Keshab Deb 2006 (111) FLR 1178 (SC) JDA vs. Ram Sahai*, while awarding compensation of Rs. 1,50,000/- to the concerned workman considering his daily wages as Rs. 45/- in view of the fact that the workman had put in about 3 years of service, has observed as under:

> ***"It is apparent that termination of services of a daily wager does not amount to retrenchment and for violation of section 25 F in such circumstances, the employee cannot be given benefit of reinstatement with continuity and back wages. Hon'ble Apex Court has hold that in such circumstance employee is entitled to benefit of compensation only."***

16. Also, in *Jagbir Singh v. Haryana State Agriculture Mktg. Board (2009) 15 SCC 327 : (2010) 1 SCC (L&S) 545: Senior Superintendent Telegraph (Traffic), Bhopal v. Santosh Kumar Seal and others (2010) 2 SSC (L&S) 309* Hon'ble Apex Court has observed as under:

> ***"However, in recent past, there has been a shift in the legal position and in a along line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.***
>
> ***The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded."***

17. In the light of principle laid down in aforementioned case laws, it would not be just and proper to direct that the workman be reinstated in service. The ends of justice would meet by paying compensation to the workman instead in place of relief of reinstatement in service.

18. Having regards to these facts that the workman has worked as daily wager for more than 05 years i.e. from 01.05.2000 to 21.10.2005 and he was getting Rs. 50/- per day at the time of his alleged termination and keeping in view the entire facts of the case and the law, the interest of justice would be subserved, if, management is directed to pay lump sum amount of compensation only.

19. Accordingly, the management is directed to pay a sum of Rs. 1,00,000/- (Rupees One Lakh only) to the workman as compensation for termination of his services in violation of section 25 F of the I.D. Act. The said amount shall be paid to the workman within 08 weeks of publication of the award, failing which; the same shall carry simple interest @ 6% per annum.

20. The reference under adjudication is answered accordingly.

LUCKNOW

09th June, 2020

P. K. SRIVSTAVA, Presiding Officer

नई दिल्ली, 30 जून, 2020

dk- vk- 495.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनियन बैंक आफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ सं. 89/2002) को प्रकाशित करती है जो केन्द्रीय सरकार को 30.06.2020 को प्राप्त हुआ था।

[सं. एल-12012/210/2001-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 30th June, 2020

S.O. 495.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 89/2002) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Union Bank of India and their workmen, received by the Central Government on 30.06.2020.

[No. L-12012/210/2001-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM-LABOUR COURT, LUCKNOW

PRESENT : P. K. SRIVASTAVA, PRESIDING OFFICER

I.D. No. 89/2002
Ref. No. L-12012/210/2001-IR(B-II) dated: 23.04.2002

BETWEEN

Sri Sohan S/o Sh. Shiv Moorat
Village: Rehti, P.O.-Trilochan
Mahadeo
Jaunpur – 222001

AND

The Dy. General Manager
Union Bank of India
Zonal Office, Sharda Tower
IInd Floor, Kapurthala Complex, Aliganj
Lucknow (UP) – 226020

AWARD

1. By order No. L-12012/210/2001-IR(B-II) dated: 23.04.2002 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Sri Sohan S/o Sh. Shiv Moorat, Village: Rehti, P.O.-Trilochan, Mahadeo, Jaunpur and the Dy. General Manager, Union Bank of India, Zonal Office, Sharda Tower, IInd Floor, Kapurthala Complex, Aliganj, Lucknow (UP) for adjudication to this CGIT-cum-Labour Court, Lucknow.

3. The reference under adjudication is:

"WHETHER THE ACTION OF THE MANAGEMENT OF UNION BANK OF INDIA IN TERMINATING THE SERVICES OF SH. SOHAN W.E.F. 19.1.1999 IS LEGAL AND JUSTIFIED? IF NOT, WHAT RELIEF THE WORKMAN IS ENTITLED TO?"

3. The case of the workman, Sohan, in brief is that he was required to work as Part Time Sweeper –cum-Peon by the management w.e.f. 04.12.1997 on daily wage basis @ Rs. 25/- per day; and he continued to work as such till 18.01.1999 when he was not allowed to work for his insistence to put his signature on the attendance register. It has been alleged by the workman that his services had been terminated by the management without any notice or notice pay in lieu thereof or any retrenchment compensation in violation to the provisions contained in Section 25 F of the Industrial Disputes Act, 1947; and accordingly, has prayed that his termination be declared illegal and he be reinstated with consequential benefits including full back wages.

4. The management of the Union Bank of India has filed its written statement; wherein it has denied the claim of the workman and has submitted that the workman had never been appointed by the Bank in any capacity; nor did he under gone any recruitment process, prescribed for the sub-staff in the Bank, as such, there was no termination of his services at any point of time as there was no relationship of employee and employer between the workman and the Bank at any point of time. The management has submitted that since there was no formal termination, therefore, there arises no question of violation of any of the provisions of the I.D. Act. Accordingly, the management has prayed that the claim of the workman be rejected being devoid of any merit.

5. The workman did not file any rejoinder; however he filed photocopy of petty cash memo for the period 04.12.1997 to 18.01.1999 in support of its case. On the contrary the management of the bank has field original voucher dated 02.12.1997 to 30.12.1999 towards payments made to the workman. The parties adduced their oral evidence apart from submitting their respective submissions in support of their pleadings.

6. Heard learned authorized representatives of the parties at length; and perused entire evidence on record.

7. The learned authorized representative of the workman has submitted that the workman had been appointed on the post of Peon/Sweeper on 04.121997 and he worked accordingly up to 18.01.1999 when his services had been terminated without complying with the provisions of the Section 25 F of the Act. He has submitted that the workman during his service period has worked with the utmost satisfaction of the management for more than 240 days in a calendar year; therefore, he is entitled for reinstatement with consequential benefits as per law. He has relied upon:

(i) Director, Fisheries Terminal Division vs Bhikubhai Meghajibhai Chawda 2010 (1) SCC 47.

(ii) K. Duraisamy vs The Tamil Nadu Electricity Board & others 1992 LLR 123.

(iii) Sitapur Eye Hospital, Faizabad & another vs Industrial Tribunal II, Lucknow & another 2001 (89) FLR 118.

(iv) Coal India Ltd. vs Presiding Officer, Labour Court No. 3 & others 2001 (89) 929.

(v) Employer, Management, Calcutta Telephones and another vs Presiding Officer, Central Government Industrial Tribunal, Calcutta & others 2001 (89) FLR 979.

8. In rebuttal, the learned counsel of the bank has argued that the workman had never been in any capacity with the bank; hence there was no relationship of employer and employee between the bank and the workman, therefore, there arise no question of violation of any statutory provision or termination of the workman at any point of time. Moreover, he submitted that the services of the workman had been availed by the management of the bank on casual basis, intermittently; but the workman never worked for the duration he claims and he is not entitled for any benefits within the purview of the Act.

9. I have given my thoughtful consideration to the rival pleadings and submissions of the parties and scanned entire evidence on record.

10. It is the case of the workman that he was appointed as Part Time Sweeper/Peon by the opposite party; but was not given any appointment letter; and he worked with the opposite party continuously for the period 04.12.1997 to 18.01.1999 he services were terminated orally w.e.f. 19.01.1999 without any notice or notice pay in lieu thereof in contravention of the provisions contained in the section 25 F of the I.D. Act, 1947 instead of fact that he worked for more than 240 days in a calendar year. He has filed photocopy of petty cash vouchers in support of his claim w.e.f. 04.12.1997 to 18.01.1999.

11. Per contra, the single pointed case of the management is that the workman was never selected or appointed by the bank and there was no relationship of employee and employer between the workman and the Bank; therefore, there arise no question of terminating his services or violation of any of the provision of the Act. However, it has submitted that the services of the workman had been availed by the bank intermittently on casual basis and was paid accordingly on daily rates; hence there was no contravention to any of the provisions of the Act. It has filed original of the payment vouchers dated 04.12.1997 to 18.01.1999.

12. It is settled law that when the workman comes forward with the case that his services have been terminated without following previsions of the section 25 F of the Act, then burden of proof heavily lies upon him to prove that he had worked for 240 days in the preceding twelve months from the alleged date of his termination. However, Hon'ble Gujrat High Court in *Director, Fisheries Terminal Division vs. Bhakubhai Meghajibhai Chavda 2010 AIR SCW 542*; has observed that for proving 240 days' continuous working, the workman would have difficulty in having access to all official documents, muster rolls etc., in connection with his service, therefore, the burden of proof shifts to the employer to prove that he did not complete 240 days of service in requisite period to constitute continuous service.

The workman in his oral evidence on oath has stated that he worked w.e.f. 04.12.1997 to 18.01.1999 and was paid @ Rs. 25/- per day. He has field photocopy of petty cash vouchers w.e.f. 04.12.1997 to 18.01.1999 and has prayed this Tribunal to summon the originals of the same from the bank vide his application dated Nil, paper no. C-36. The management has its objection, M-45; however the management filed original vouchers, in compliance of order dated 30.04.2007 for the period 02.12.1997 to 30.13.1999. From perusal of the original payment vouchers, paper No. 45/2 to 45/25 for the period 02.12.1997 to 30.13.1999, it goes to show that the workman worked for the opposite party bank and was paid accordingly; however, while making payments the object was changed frequently. Sometimes, the purpose of making payment to the workman, in the payment vouchers, had been mentioned for daily wages; and some time for stationary or consumable item charges; and sometimes for photocopying charges or other miscellaneous objects. There is no iota of evidence on record from either side that the workman had been regularly appointed by the bank or any formal appointment letter had ever been issued to the workman; however, the original payment vouchers, filed by the management, establish the contention of the workman that the workman worked for the bank and was paid accordingly during period 02.12.1997 to 30.12.1999.

13. Thus, there is ample evidence to record this finding that the workman had actually worked for more than 240 days in preceding twelve months from the date of his alleged termination i.e. 19.01.1999; and oral termination of his services, without any notice or notice pay in lieu thereof was in violation of the section 25 F of the I.D. Act, thus, the alleged termination of the services of the workman was neither legal nor justified.

14. Now, it is to be considered as to whether the workman is entitled for reinstatement. From the evidence produced by the workman it is not proved that his appointment was as a regular worker. Admittedly, the services of the workman were terminated orally on 19.01.1999. In *Haryana Roadways vs. Rudhan Singh (2005) 5 SCC 591; 2005 SCC (L&S) 716* Hon'ble Apex Court while considering the question regarding award of back wages has observed:

> ***"There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of section 25 F of the Act, entire back wages should be awarded ..... However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which required to be taken into consideration, is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calander year."***

15. In *2008 (119) FLR 877 Deepak Ganpat Tari vs. N.E. Theater Pvt. Ltd.* Hon'ble Bombay High Court relying on the Hon'ble Apex Court's judgment in *2008 (117) FLR 1086 (SC) A P V K Brahmandandam 2008 (118) FLR 376 (SC) Telephone DM vs. Keshab Deb 2006 (111) FLR 1178 (SC) JDA vs. Ram Sahai*, while awarding compensation of Rs. 1,50,000/- to the concerned workman considering his daily wages as Rs. 45/- in view of the fact that the workman had put in about 3 years of service, has observed as under:

> ***"It is apparent that termination of services of a daily wager does not amount to retrenchment and for violation of section 25 F in such circumstances, the employee cannot be given benefit of reinstatement with continuity and back wages. Hon'ble Apex Court has hold that in such circumstance employee is entitled to benefit of compensation only."***

16. Also, in *Jagbir Singh v. Haryana State Agriculture Mktg. Board (2009) 15 SCC 327 : (2010) 1 SCC (L&S) 545: Senior Superintendent Telegraph (Traffic), Bhopal v. Santosh Kumar Seal and others (2010) 2 SSC (L&S) 309* Hon'ble Apex Court has observed as under:

> ***"However, in recent past, there has been a shift in the legal position and in a along line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.***
>
> ***The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded."***

17. In the light of principle laid down in aforementioned case laws, it would not be just and proper to direct that the workman be reinstated in service. The ends of justice would meet by paying compensation to the workman instead in place of relief of reinstatement in service.

18. Having regards to these facts that the workman has worked as daily wager for approximately 14 months i.e. from 04.12.1997 to 18.01.1999 and he was getting Rs. 25/- per day at the time of his alleged termination and keeping in view the entire facts of the case and the law, the interest of justice would be subserved, if, management is directed to pay lump sum amount of compensation only.

19. Accordingly, the management is directed to pay a sum of Rs. 25,000/- (Rupees Twenty Five Twenty Five Thousand only) to the workman as compensation for termination of his services in violation of section 25 F of the I.D. Act. The said amount shall be paid to the workman within 08 weeks of publication of the award, failing which; the same shall carry simple interest @ 6% per annum.

20. The reference under adjudication is answered accordingly.

LUCKNOW

09th June, 2020

P. K. SRIVSTAVA , Presiding Officer

नई दिल्ली, 30 जून, 2020

dk- vk- 496.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मै. क्वालिटी सर्विस एंड सल्युशन, मारमोगोवा पोर्ट ट्रस्ट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, मुम्बई के पंचाट (संदर्भ सं. 18/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 30.06.2020 को प्राप्त हुआ था।

[सं. एल-36011/04/2011-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 30th June, 2020

S.O. 496.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 18/2012) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure, in the industrial dispute between the management of M/s. Quality Services & Solution, Marmagoa Port Trust and their workmen, received by the Central Government on 30.06.2020.

[No. L-36011/04/2011-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : M. V. Deshpande, Presiding Officer

REFERENCE NO.CGIT-2/18 of 2012

EMPLOYERS IN RELATION TO THE MANAGEMENT OF M/S. QUALITY SERVICES & SOLUTIONS

The Director,
M/s. Quality Service & Solutions
Rukmini Towers, 2nd Floor, Near Tilak Maidan,
F. L. Gomes Road, Vasco-Da-Gama,
GOA – 403 802.

AND

THEIR WORKMEN.

The General Secretary,
The Marmagoa Waterfront Workers Union,
Dr. Mukund Building, 2nd Floor,
VASCO DA GAMA,
[GOA] – 403 802.

APPEARANCES:

FOR THE EMPLOYER : Mr. Girish Sardesai, Advocate
FOR THE WORKMEN : Absent

Mumbai, dated the 4th February, 2020

AWARD

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour & Employment, New Delhi vide its order No. L-36011/04/2011–IR (B-II) dated 12/19.047.2012. The terms of reference given in the schedule are as follows :

> *"Whether (1) the charter of Demands dated 22.2.2010 (Annex-I-A) served on the management of M/s. Quality Services & Solutions, Goa by the Marmagoa Waterfront Workers Union demanding 25% increase in the wages and other allowance is legal and justified ? (2) Whether the action of the management in demanding different dates of commence of Settlement for Port & Dock Workers and Mines Workers is legal and justified ? What relief the Union is entitled to ?''*

2. After the receipt of the reference, both the parties were served with the notices.

3. On going through the Roznama, it appears that the union is absent since long. After filing statement of claim, union is absent even though the notice was issued to union.

4. As such the Union has not substantiated its claim by adducing evidence. Therefore the reference is liable to be rejected for want of evidence. Hence order.

ORDER

Reference is rejected for want of evidence with no orders as to costs.

Date: 04.02.2020

M.V. DESHPANDE, Presiding Officer

नई दिल्ली, 30 जून, 2020

d k- v k- 497.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक आफ बडौदा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ सं. 42/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 30.06.2020 को प्राप्त हुआ था।

[सं. एल-12012/51/2010-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 30th June, 2020

S.O. 497.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 42/2010) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of Bank of Baroda and their workmen, received by the Central Government on 30.06.2020.

[No. L-12012/51/2010-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 02ND JUNE, 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 42/2010

I Party

Sh. D. Krishnamurthy,
Since Deceased by LRs'

a) Smt. Annapoorna,
W/o Late. D. Krishnamurthy,
b) Mr. Sridhar. K,
S/o Late. D. Krishnamurthy,

c) Miss. Shubha.K,
D/o Late. D. Krishnamurthy,

All are residing at,
No. 278, 1st Cross, Vinayaka Layout,
Marthahalli,
Bangalore - 560 017.

II Party

The Chairman & Managing Director,
Bank of Baroda, Head Office,
41/2, Trinity Circle, M. G. Road,
Bangalore - 560001.

Appearance

Advocate for I Party : Mr. Suresh S.M

Advocate for II Party : Mr. P. Udayashankar Rai

AWARD

The Central Government vide Order No. L-12012/51/2010-IR(B-II) dated 29.11.2010 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether the action of the management of Vijaya Bank, Bangalore, Karnataka in inflicting the punishment of removal from the services of the Bank with superannuation benefits as would be due otherwise and without disqualification from future employment w.e.f. 04.07.2008 to Sh. D. Krishnamurthy, Ex-Peon is justified and legal? What relief the workman is entitled to?"

1. The 1st Party workman late D. Krishnamurthy (who expired during the pendency of proceedings before this Tribunal) was the employee of erstwhile 'Vijaya Bank' presently 'Bank of Baroda'. He was serving the 2nd Party as a Peon and was dismissed from service after the allegation of misconduct charged against him came to be proved during Domestic enquiry.

2. In the Claim Statement he challenged the impugned Order on various ground. He claimed that, he has not committed any misconduct and the Punishment Order is bad in eye of Law, harsh and without any basis and liable to be set aside.

3. The 2nd Party justified the action taken against the workman. On demise of the 1st Party workman his Class-I Legal Heirs have come on record.

4. Though a Preliminary Issue was raised on the basis of the rival pleadings touching the fairness of the Domestic Enquiry, vide submission made in the open Court of 28.08.2019, the 1st Party gave up challenge to the fairness of the Domestic Enquiry conducted against the workman. In that view of the matter, Preliminary Issue is answered affirmatively upholding the validity of the enquiry.

5. To sum up the allegations in the charge sheet of 28.08.2007 on which the workman was tried,

While working at STC, Bangalore he availed Staff Housing Loan and supplementary housing loan from K.G. Road Branch and Mayo Hall Branch Bangalore; the total sanction limit of housing loan was Rs. 3,00,000/- with present dues of Rs. 2.67 lakhs there under; he offered the primary security of equitable mortgage of residential house property standing in his name bearing No. 73/A, Old HASB Khata No. 409/2, formed out of Survey No. 5/1, situated at Marathalli, Varthur Hobli, Bangalore East Taluk. He sold the above property to one Sh. P. Sathyanarayana for Rs. 1,50,000/- by executing absolute register sale deed on 09.02.2004 without obtaining prior permission from Competent Authority.

He failed to close the liability under staff housing loan before selling the property. He had furnished to the buyer a false and fabricated no due / no objection dated 09.12.2004 purported to have been issued by the Bank's Mayo Hall Branch. But it is confirmed by the Mayo Hall Branch that they have not issued any certificate.

6. The 1st Party participated in the enquiry with his Defence Representative. The 2nd Party examined three witnesses and produced 17 documents. The CSE opted not to adduce oral evidence but produced 3 documents which were taken on records as Dex-1 to Dex-3.

The 1st witness for the prosecution was the Senior Branch Manager of Chickpet Branch who sanctioned the Loan. The second witness was the Investigating Officer and the third witness was the Senior Branch Manager of Mayo Hall Branch who allegedly has given no due certificate.

7. The defence was, the CSE has not sold the property to Sathyanarayana or anybody and was not issued NOC. The alleged sale deed is of 09.02.2004 and the NOC is of 09.12.2004 i.e., NOC was obtained after execution of sale deed. The Original document pertaining to the property is with the Bank and the Bank's interest is protected. He has not handed over the possession of the house to the purchaser; from the sale deed / MEX-16, it is difficult to identify the name of the seller and the purchaser; the signatures shown in the reverse page of the first page of the sale deed do not tally with specimen; the witness have not furnished their address; the Advocate who reportedly drafted the sale deed was not contacted by the Investigating Officer; the encumbrance obtained by the Advocate is on 31.01.2007 but the Investigation Report is of 06.01.2007. When one Mr. Sathyanarayana attempted forcibly to take possession of his property the CSE made representation to CSC Mahadevapura not to part with the rights on the property to any other person and the entire right on the property vests with CSE and Vijaya Bank. The matter is pending before the Court of Small Causes; a show cause notice is served to Sathyanarayana and HRC 410/2006 is registered against the P. Sathyanaryana; the NOC was not issued by Mayo Hall Branch as deposed by MW-3.

It was further argued that, the sale deed dated 09.02.2004 in question was not a sale deed with the consent and knowledge of CSE. He had certain financial transactions with Sathyanarayana who insisted signing certain documents evidencing the said transaction and the CSE was taken to the Sub-Register Office and in a hurry CSE was made in to sign the documents without knowing to what the documents relate to. He is in possession of the property and has availed staff housing loan accounts. He came to know the execution of sale deed only after receiving a legal notice from Sathyanarayana; immediately he filed FIR against Sh. P. Sathyanarayana; he has filed objection with the Revenue Inspector not to make katha in the name of Sh. Sathyanarayana.

8. The Enquiry Officer observed that the CSE had signed the documents and had not cancelled the sale deed of 09.02.2004. The Enquiry Officer expressed that his Forum is not competent or proper regarding the genuiness of the said transaction. Since no material was placed to show that housing loan was closed and prior permission from the competent Authority for disposing the Mortgage property was obtained, it followed that Charge No. 1 and 2 were held to be proved and the charge of furnishing fabricated / concocted no due certificate was not proved. The Disciplinary Authority endorsed the finding of the Enquiry Officer and removed him from service with superannuation benefits.

9. Now the 1st Party has produced Certified Copy of the Judgment passed in OS 2792/2007 passed by the City Civil Court Bangalore. It was the case filed by the deceased 1st Party workman / Sh. D Krishnamurthy against the Vendor/P. Sathyanarayana and City Municipal Council; on his death, his Class-I legal heirs have prosecuted the case. The suit was filed by the Plaintiff for declaration of sale deed dated 09.02.2004 is the outcome of fraud and misrepresentation, therefore, is null and void and not binding on the plaintiff and for permanent injection restraining defendant No. 1 (P. Sathyanarayana) in any matter interfering in peaceful possession and enjoyment of the suit schedule property of the plaintiff and for such other reliefs. As per the decree the suit schedule property is bearing No. 73/A, 1st Cross, Vinayaka Layout, Marathahalli, Bangalore 560037; it is the very same property which was the subject matter of the Domestic Enquiry. After a strong contest the suit is decreed vide judgement and decree dated 04.09.2017.

In view of the above position it is evident that, the workman did not part with the property physically, neither he has transferred his rights in the property cautiously and out of his own violation. It is clear that he had no intention to sell the property to a third person against the terms of the agreement of loan he had entered with the Bank. The Enquiry Officer despite noticing that the workman had not taken No Objection Certificate prior to the alleged transaction of 09.02.2004 proceeded in a robotic manner that the workman's signature is found on the alleged sale deed of 09.02.2004. All the while, the 1st Party workman, subsequent to his death his Class-I Legal Heirs are in the possession of the house property. The Bank has not shown that any financial loss is caused due to the alleged transaction.

10. The Enquiry Report is dated 26.03.2008. The workman had instituted the suit in the year 2007 as the C.C of Judgement produced now by his legal heirs suggests. Before the Enquiry Officer he had produced the copies of the private complaint filed by him under Sec 200 Cr.P.C before the CMM Court Bangalore. The copy of the Petition by P. Sathyanarayana against him under Karnataka Rent Act, 1999, the copy of the representation given by him to the CMC Mahadevapura requesting not to change the Katha. But what prevented him from not bringing into the knowledge of the Enquiry Officer about filing the Civil Suit for declaration before the Court of City Civil and Session Judge Court, cannot be assumed at this point of time. As the decree passed in OS 2792/2007 suggests that the suit was filed on 09.02.2007, itself.

However, I presume that the Defence Representative not being a legally trained person either by ignorance or lack of knowledge could not keep the Enquiry Officer informed during the Domestic Enquiry. However, vide his letter dated 21.06.2008, addressed to the Disciplinary Authority / Deputy General Manager in response to the proposed punishment of removal for service, among other things he has stated that, *"... I have instituted the suit in OS No. 2792/2007 against him for cancellation of the deed of sale and for other relief/s. He had also mentioned about the pendency of private complaint in No. 4912/2007 before IV ACMM, Bangalore and both cases are pending."* But without paying heed to the factum of filing a Civil Suit seeking cancellation of sale deed, the Disciplinary Authority endorsed the finding of the Enquiry Officer on the inference that there is no documentary evidence that the sale deed got executed by him was by fraud he is and deceived, thus, endorsed the finding of the Enquiry Officer.

Though, I do not find much fault on the part of the Enquiry Officer in finding charge No. 1 and 2 having been proved on the simple logic that, the sale deed of 09.02.2004 is not cancelled though he has reportedly approached the Court. But what about the Disciplinary Authority? Though the Disciplinary Authority noticed that *"...Sathyanarayana in whose favour CSE had purportedly executed the sale deed is contending otherwise. Further Court has not set aside the said sale deed... "*. Pendency of the dockets before the Courts of Law is the big social menace the country is facing. The punishment is imposed on 04.07.2008 by 17 months of institution of the original suit O.S 2792/2007. Anybody having some general knowledge would know about the fate of a civil suit that it is hard for a original suit to reach logical conclusion within one or two years of filing. Having not doubted the actions taken by the 1st Party workman against P. Sathyanarayana, in all possible manners that is, Civil / Criminal and Revenue Forums, the Disciplinary Authority ought to have taken to its consideration the totality of circumstances. Contrarily, the Disciplinary Authority has implied the punishment of removal from service with superannuation benefits.

In his appeal the workman requested the Appellate Authority to re-examine his case and reminded pendency of cases in respect of the property. He put forward his pathetic condition that his son suffers from "Binet Kamat Intelligence". While seeking pardon for the mistake committed he stated, "*I should not have involved in this kind acts and I was not knowing that this will result in snatching the butter and bread of the dependents*." But the Appellate Authority was not impressed by his version. The signatures subscribed by him to each page of the Registered sale deed weighed more for the Appellate Authority to express that "*the above action of the Appellant amounts to perpetrating fraud on the Bank without closing his liability on the Bank... "*.and the appeal was dismissed.

11. Had if, the workman intentionally sold the property, he would not have prosecuted his case so far. After his death also his Legal heirs have fought till its logical end. Had If the Disciplinary Authority and the Appellate Authority had spared their due advertence to the defence and appreciated the action taken by the workman to protect his Title and possession of the immoveable property mortgaged to the Bank, things would have been different. He is removed from service with superannuation benefits vide order dated 04.07. 2008 and expired on 21.07.2012. By the said Order, he lost about 6 years of his valuable service. However, he has expired before attaining the age of superannuation. The Order of the Disciplinary Authority and the Appellate Authority is one sided with total disregard to the attending circumstances and also without independent application of mind. Hence, I hold that the action taken against the workman is not justified. For the said reasons, I hold that it is a fit case to exercise the jurisdiction vested with this Tribunal by Sec 11-A of 'the Act'.

12. Coming to the question of relief, since the workman expired before attaining the age of superannuation, the Punishment Order imposed by the Disciplinary Authority in removing him from service with superannuation benefits deserves to be set aside and he shall be treated as on duty continuously till his last date i.e., 21.07.2012 and his legal heirs shall be paid 50% of the back wages from the date of the punishment Order till 21.07.2012.

AWARD

The reference is accepted.

The action of the Management of erstwhile Vijaya Bank Bangalore in inflicting the punishment of removal from service with superannuation benefits as would be due otherwise and without disqualification from future employment w.e.f 04.07.2008 to Sh. Krishnamurthy, Ex-peon is not justified. Hence, not legal.

The deceased workman shall be treated as on duty without break until the date of his death on 21.07.2012 and his Class-I Legal Heirs shall be paid 50% of back wages for the period 04.07.2008 to 21.07.2012 by the 2nd Party 'Bank of Baroda'.

(Dictated to o/s LDC, transcribed by her, corrected and signed by me on 02nd June, 2020)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 30 जून, 2020

dk- vk- 498.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केनरा बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ सं. 57/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 30.06.2020 को प्राप्त हुआ था।

[सं. एल-12012/39/2008-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 30th June, 2020

S.O. 498.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 57/2008) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of Canara Bank, and their workmen, received by the Central Government on 30.06.2020.

[No. L-12012/39/2008-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 22ND MAY, 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 57/2008

I Party	**II Party**
Sh. V. Anjanappa, S/o Late Thimmappa, Flat No. 505, Mahavir Residency, J.P Nagar 5th Phase, Rose Garden Road, Bangalore - 560 078.	The General Manager, Canara Bank, Head Office, J.C Road, Bangalore - 560 002.

Appearance

Advocate for I Party : Mr. Lakshmiprasad Reddy

Advocate for II Party : Mr. T. R. K. Prasad

AWARD

The Central Government vide Order No. L-12012/39/2008-IR(B-II) dated 07.08.2008 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

> **"Whether the action of the management of Canara Bank, Circle Office, No. 86, M.G. Road, Bangalore, Karnataka vide order No. BLC/DAC/4427/E-37/2006 dated 29.03.2006 in imposing the punishment of compulsory retirement to Sh. V. Anjanappa, Ex-clerk w.e.f. 04.04.2006 is legal and justified? If not, to what relief the workman is entitled?"**

1. The 1st Party workman, former Clerk of the 2nd Party is prematurely retired from service as a measure of punishment by the 2nd Party / Employer. Before imposing the punishment order the workman was issued charge sheet and tried in a Departmental Enquiry, on the Enquiry Officer holding the workman guilty of the charges, punishment is imposed.

2. The 1st Party in his claim statement claims that after issuing charge Sheet 2nd Party did not afford him opportunity to peruse the documents and the Investigation Report. He also has his exception to the way the enquiry was conducted by the Enquiry Officer and would contend enquiry finding is perverse, biased, suffering from non-application of mind. With regard to the punishment order, he alleges that the Disciplinary Authority without reference to the objection taken by him to the findings of the Enquiry Officer, simply proceeded to impose the penalty on what the Enquiry Officer has stated in his report and the order displays a total lopsided attitude, only to fix the 1st Party. With regard to the order of Appellate Authority in rejecting his appeal he contends that the Appellate Authority did not give any reasons as to why the contentions of the 1st Party does not find favour in his reasoning. He grieves that he is victimised by imposing grossly disproportionate punishment and deprived of his livelihood.

3. The 2nd Party denies all the allegations against the procedure of enquiry, Enquiry report, order of Disciplinary / Appellate Authority and asserts that punishment order is justified.

4. The 1st Party workman has adduced evidence that he is unemployed and suffering with extreme hardship and financial difficulties.

5. Both parties have submitted respective arguments.

6. The allegations in the Charge Sheet dated 23.05.2005 was to the effect that, He indulged in making fictitious and misleading entries in the system and effected fraudulent withdrawals without preparing / preserving the relevant vouchers and misused the systems passwords of other employees; he has suppressed many of the facts for personal gain with an ulterior motive…

The charge sheet runs into 8 pages with details of the misconduct alleged to have been committed by him in respect of 9 Accounts maintained by the Account holders.

Charge No. 10 pertains to not complying the undertaking given by him while availing loan of Rs. 35,000/- under DPN Scheme for applying to the shares offered by the Canara Bank under employees' quota. He was allotted 700 shares and subsequently he sold the same; as per his undertaking he should have credited the share credits to the DPN Loan outstanding but he did not credit the amount as undertaken.

The alleged unauthorised / fraudulent withdrawal amounts to 'Gross Misconduct' within the meaning of Chapter XI Regulation 2(A)(i) of Canara Bank Service Code; making false entries in the records of the Bank is a 'Gross Misconduct' within the meaning of Chapter XI Regulation 3(a) of the said Code. His conduct of wilful damage to the property of the Bank and the customers amounts to 'Gross Misconduct' within the Chapter XI Regulation 3(j) of the said Code.

7. During the enquiry fourteen witnesses were examined for the Management and 78 documents were marked as MEX-1 to MEX-78. After closure of the management side 1st Party examined four witnesses and produced 14 documents as DEX-1 to DEX-14, however he chose not to examine himself as a witness.

8. Written brief was submitted by both.

9. Enquiry Officer returned his finding thus:

Basing on the documentary and oral evidence .....and also depending on the circumstantial evidences, all the charges against the CSE are proved beyond any reasonable doubt and so CSE is found guilty of the charges...

10. 1st Party had submitted his remarks to the enquiry finding as called for by the Disciplinary Authority, but Disciplinary Authority was not convinced and concurred with the Enquiry finding and proposed the punishment of 'Compulsory Retirement' as envisaged under Chapter XI Regulation 4 Clause (b) of Canara Bank Service Code.

11. He was also given personal hearing. Vide order dated 29.03.2006 the Disciplinary Authority noted its observations from the evidentiary material borne in the enquiry records, while concurring with the enquiry finding and recorded that 1st Party is guilty of all charges as enumerated in the Enquiry Officer's finding. The punishment of compulsory retirement was separately ordered by the Deputy General Manager / Disciplinary Authority vide his order dated 29.03.2006.

12. The Appellate Authority vide its order dated 17.11.2006 observes that *".....all the Account holders are either close relatives / friends of the Appellant. The Appellant misutilised his official position and taken undue pecuniary advantage which points at his doubtful integrity. The deposition of Defence Witnesses are only an afterthought as there are inconsistency in their deposition in relation to the findings / facts came out in the Investigation Report.*

Thus, the findings of the Enquiry Officer and the orders of the Disciplinary Authority were not interfered and the punishment was confirmed and the appeal was rejected.

13. Before this Tribunal, the 1st Party has adduced evidence stating that he is unemployed and due to his Trade Union activities he was victimised by the superior officers; he has no income and is in financial distress. He has produced 10 letters given to him by the 2nd Party appreciating his performance during his official tenure.

14. Sh. LPR for the 1st Party has addressed his oral argument along with his written brief and judgments of the Higher Courts. He has made attempt to take me through the lapses in the Investigation Report so also the Enquiry Report, order of the Disciplinary Authority and Appellate Authority for not considering the valid defence raised by him against the allegations. His main contention is, none of the complainants were examined as witnesses, and the Investigating Officer has not personally recorded the statements of all the Accountholders whose accounts are alleged to have interrupted / amounts withdrawn. The defence witnesses had given evidence ratifying the withdrawals, but the Investigating Officer did not refer their statements. None of the employees of the Branch had given statement to the Investigating Officer against him. The reply given by him to show cause notice was under threat by the superiors, but the Enquiry Officer has considered said reply as admission of misconduct.

15. The defence is now pointing towards the admission extracted during the cross examination evidence of the management witnesses, which both the Enquiry Officer and Disciplinary Authority conveniently overlooked. MW-1 was the Investigating Officer, he had not disputed the question of the Defence Representative that the transactions referred to where verified by Smt. R Shashi Special Assistant and Smt. Sharadamba, thus they have the stamp of authentication and the allegation regarding withdrawal pertaining to the account number 56982 dated 17.12.2003 was created, entered and posted by Sh. Adiga and verified by Sh. P N Raghu. He had also admitted that Sh. Ramaprasad and Sh. Adiga (officials of the Bank) had stated that they were not following the system and were not verifying the cash paid instruments pertaining to the dates

reported therein – the transaction pertaining to SB 57771 could have been checked and verified and its bears the stamp of authenticity and authorisation. He had admitted that he had not confirmed whether the transfer slips after bundling of the same were duly checked by the Authority concerned in Jayanagar Shopping Complex in accordance with the prevailing procedures. In his Investigation Report he has not gone into the details of procedure of maintaining slip bundles.

As per the statement of MW-2/K Manjunath the slip of transaction was there at the time of transaction/ at the end of the day.

None of the then officials MW-3, MW-4, MW-5, MW-6, MW-7, MW-8 and MW-9 had given statement before the Enquiry Officer against the 1st Party.

MW-12 / Smt. Vidya P Pai / Officer, admitted the transactions indicated in her statement, bear her approval, authentication and authority. MW-10 / Sh. P Rama Prasad / the officer whose duty was safe keeping of cash and other security items and to tally cash with the day book figures of the day. From his evidence it is evident that, after tallying the paid instruments they used to be duly bundled and kept in double locker. Sometimes due to heavy pressure of work the instruments were put in double lock along with the cash and will be stitched on the next day morning, thus indicating the responsibility was that of the Incharge Officer of the double lock; he has also admitted that it is the duty of the key holder to physically verify / count the cash paid instruments as per the norms of the Bank.

MW-10 had also admitted that he was in omission for not counting of cash paid instruments of days referred in his statement given before the Investigating Officer contravenes / violates the system and procedure laid down in the cash manual.

It is evident from the statement of MW-13 /Smt. R Shashi, Special Assistant that she has posted and verified the transactions at MEX-27, 28, 29, 32, 33 MEX-40 but she has escaped by stating that somebody verified in her computer under her password. Without her password no one could have operated and post and verify the instruments.

The statement of financial transaction of inquiry at MEX-25, MEX-26 and MEX-66 clearly show that they are created, entered and posted by MW-14 / B R Adiga (Senior Manager). But in his statement, he attempted to escape by stating that he will not create or enter any entry in the Branch. During cross examination he was unable to explain how verification of the cash paid instrument immediately after closure of the cash had missed. He had confirmed that in respect of all transfer transaction handled by Smt. Saroja Gupta transfer slips were prepared by her.

16. It is further contended for the 1st Party that his wife's name was Vishalakshi alias Vishala and after marriage she was named Usha; she has given statement as DW-1 confirming the above factors; DW-2 Vijayalakshmi Thimmappa prior to her marriage was known as Yashodamma and she had ratified the transactions pertaining to both accounts. DW-3 is the relative who has stated that she authorised the 1st Party for transaction in her account, likewise DW-4 has also stated that himself and his wife had authorised the 1st Party to remit and withdraw cash from their accounts. But the statements of the above witnesses were not appended to the Investigation Report. The Investigating Officer had admitted that he had not met the Accountholders from whose accounts 1st Party allegedly made fictitious entries. All the entries made by him were duly authorised by respective authorities; the Complainant Sh. Dr. V Basaveswara Rao at whose instance investigation was commenced was not examined during the enquiry thus he had no opportunity to examine him; he was a vital witness to prove the contents of the document, but all these facts are ignored by the Enquiry Officer.

17. It is the further argument of the defence that, though none of the witnesses had stated that the 1st Party had misused their passwords, the Enquiry Officer has recorded that he was misusing the passwords of the employees to make fictitious entries. It was his case that he used to enter the cheque numbers in a 'Particular Column' but not under 'Cheque Numbers Column' as was the normal practice followed in the branch and Manual of Instruction was not strictly followed by the branch. But the Enquiry Officer ignoring this contention has recorded in his report that the number of cheques in question are showed in a 'Particular Column' but not in the Cheque Numbers Column". They were not generating the cash payment waste as per the manual of instruction, that is admitted by MW-14 but the Enquiry Officer has recorded that the 1st Party has not generated the cash payment waste in duplicate for acknowledgement of the Supervisor. His finding that cheque numbers 408074, 408075 and 408076 are not available in the cash paid slip bundle of the said date is by ignoring the evidence that cash paid instruments was stitched on the next day and not on the same day. As per the admission of MW-13 it was not required that the cheques are to be verified in bunches along with others, sometimes cheque numbers are not fed into the system but were entered into the cheque book issued register,

ignoring this evidence, Enquiry Officer has held him guilty of not sending the cheques to the Supervisor. With regard to the charge pertaining to Sh. V Sharath, SB 56982 not only he was not examined as a witness but the Investigating Officer had taken his statement over phone and the same is used against the CSE by the Enquiry Officer.

The Disciplinary Authority has not referred to the objections filed by him against the finding of the Enquiry Officer, he has simply imposed penalty, on what the Enquiry Officer had said in his report. The Appellate Authority also has not given any reasons as to why the contentions of the 1st Party does not favour his reasonings.

18. It is further contended that the 2nd Party had not lodged complaint to the Police in respect of the allegations made in the charge sheet. They ought to have lodged complaint to the jurisdiction police to investigate the complaint then only the truth would have come out.

Following citations are relied:

(i) AIR 1972 S.C 330, M/s Bareily Electricity Supply Co. Ltd. Vs Workmen & Others

(ii) ILR 2004 KAR 298, G.V. Ashwathnarayan Vs The Zonal Manager and others

(iii) (2010) 4 SCC 491, LIC of India and another Vs Rampal Singh Bisen

(iv) ILR 2010 KAR 2829, B.C. Ammakka Vs State of Karnataka

(v) 2013-I-LLJ-661, Management of Indian Bank Vs Presiding Officer CGIT

(vi) (2014) 10 SCC 301, Rabhubir Singh Vs General Manager Harayana Roadways

(vii) 2018 (3) AKR 175, Divisional Controller NWKRTC Vs Chandrashekar

The first three of the above judgment pertains to the subject of proof of document in a Departmental Enquiry. The fourth judgment is about the requirement of conclusive evidence in respect of the alleged charges. The fifth judgment calls for direct evidence to prove the charge that the amounts were received by the workman was not accounted and he had secreted the amount. The sixth judgment emphasis on the Doctrine of proportionality that has to be followed by an employer at the time of taking Disciplinary Action against the employees to satisfy principles of natural justice and safeguard their rights. The last cited judgment grants relief of reinstatement with back wages on finding that the charge of corruption was not proved against the workman.

19. To repel the case made as above by the 1st Party 2nd Party along with their written argument have placed reliance on the following judgments :

Regarding non examination of the complainant the Authority relied is Civil Appeal No. 3151 of 1997, DD 19.09.2000, State Bank of India Vs Tarun Kumar Banerjee and others the observation was:

> *'But as far as the evidence tendered by the two witnesses is concerned who actually saw the incident having taken place in the manner referred to earlier, the charge of misconduct against the first respondent stood proved to the hilt and we fail to appreciate as to how the Tribunal could have taken any other view.*
>
> *A customer of the Bank need not be involved in a domestic enquiry conducted as such a course would not be conducive to proper Banker customer relationship and, therefore, would not be in the interest of the Bank. Further, when money was secured a prudent banker would deposit the same in the account of the customer complaining of loss of money and, therefore, non-production of money also would not be of much materiality'.*

In 2005 AIR SCW P4 333, National Fertilizers ltd. and another Vs P.K. Khanna, it was held that opportunity to show cause as to the quantum of the punishment is not necessary.

From the judgment reported in AIR 1996 SC P320 in the matter of State Bank of Bikaner and Jaipur and others Vs Prabhu Dayal Grover, emphasis is laid on the observation that when the Disciplinary Authority has gone through the entire proceedings and applied its mind before concurring with the findings of the Enquiry Officer, the order of the Disciplinary Authority cannot be struck down on the ground that it is a non-speaking order.

In the judgment reported in 2015 3 SCC P101 in the matter of General Manager (Operations) State Bank of India and another Vs R Periyasamy, the principle reiterated was, the standard of proof in domestic / departmental enquiry is that of preponderance of probabilities and not the proof beyond reasonable doubt.

With regard to the quantum of punishment reliance is placed on 2006 SCC (L&S) 1002, K. Raveendra Vs Deputy General Manager, Canara Bank, (pertaining to the officer of the Bank) wherein the judgment of the Division Court was confirmed wherein it was held that in a case of a Bank, and, that too, a nationalised bank, if a person is found guilty of misappropriation and forgery, confidence would be lost in such a person and hence no question of taking lenient view arises.

20. In the back ground of the above, we will travel through the enquiry finding in reference to the specific allegation.

The first allegation was Dr. V Basaveswara Rao maintains an NRE SB Account No. 41593 at Jayanagar Shopping Complex Branch where the 1st Party is serving; on 29.04.2004 3 cheques purported to be signed by Dr. V Basaveswara Rao were paid in his account by the 1st Party being the Teller Cashier for Rs. 7,000/- + Rs. 7,000/- + Rs. 6,000/- under the cheque Nos. 408074 to 408076 in favour of Sh. Ramesh. What weighed for the Enquiry Officer was, the customer in his letter dated 12.08.2004 complained that he has not issued cheque book to his NRE SB Account and he has not issued any cheque favouring Sh. Ramesh; he has not withdrawn money in the past 16 years from his SB Account. The 1st Party created / entered and posted all the above withdrawals; numbers of the cheques are not written under the cheque numbers column but are deliberately shown under particulars column, as the computer did not permit entry of cheque number because cheque book was not issued in the Account; he has not made available the paid instruments to the cash supervisor. In accordance with the Manual of Instructions of SB withdrawal slips are not considered for payment under Teller Cashier; the Teller is required to generate Cash Payment Waste (in duplicate) and handover all the paid cheques along with printout of cash payments to the Supervisor against acknowledgment for verification, but same is not complied by him; he has admitted that the cheque issued register has not shown that the said cheque book is issued to the Party. As per Smt. R Shashi these cheques did not come to her for verification and somebody in her system gone to the modified mode and verified the entries.

On receipt of the charge sheet 1st Party denied the allegations in one sentence that – *Apropos the charges / allegation / attributions drawn up against me in the above referred charge sheet, I submit that I am denying them.*

However, the statement given by him to the letter of the AGM on 15.12.2004 was marked as MEX-77, in response to the statements of the Officials of the Bank in respect of the allegations.

21. Second charge was, an amount of Rs. 28,232/- was lying in a SL Account, knowing the above fact the 1st Party fraudulently transferred the amount to the Account of one Sharath V which is a Zero Balance Account and fraudulently withdrew the amount on different dates; the entry is created, entered and posted in the name of ADIGA (Manager III) and verified by Sh. P N Raghu / Officer. The Enquiry Officer observed that Sh. B R Adiga denied having made the entries, when he forgot to lock the computer while leaving the seat, some other person must have done the work. Said Sh. Sharath V had informed Sh. B R Adiga that subsequent to transfer of the Account he has not made any transactions from the said account. As in the earlier case cheques, transfer slips and withdrawal slips were not available with the payment slip bundle. The onus of the above transaction was noosed against the CSE on the statement of Smt. Padma V Shanbhag, Clerk of the Branch, wherein she stated that she entered / created withdrawal slip for Rs. 10,000/- on 06.02.2004 to the Account of Sh. V. Sharath which might have been given by the 1st Party who was in the habit of approaching her to post cheque / slips whenever she was free and she acted in good faith. Smt. R Shashi had stated that there is a big gap between the time of passing the cheque and it's verification and she had opined that the cheque was verified by somebody under her password when she left the seat for some other reason. Sh. H G Muniswamy / Clerk had confirmed having made advance payment of Rs. 10,000/- to Sh. Anjanappa on 06.02.2004.

In respect of double payment of Rs. 7,000/- each, cheque numbers were entered in the narration column and not in the cheque number column and the cheque leaves were not issued to the Account and the answer of the Special Assistant was usual i.e. someone else has verified the instruments under her password. In respect of payment of Rs. 4,000/- on 18.03.2004 Smt. Saroja Gupta had entered the same and she verified under her password in good faith, since the Cashier had already made the payment. The CSE in his typed statement given on 15.12.2004 marked as MEX-77 had admitted making entries and reasoned out for posting them in the particulars column that it was to mitigate the delay caused to the customer, the payment was done in good faith and without negligence. Many times the cheque numbers are not fed into the computers after issuing the cheque book, it was under this impression the cheque number was entered in particular column. Though he contended that the double payments of Rs. 7000/- is made as single payment as in the normal practice, he admitted withdrawing Rs. 4,000/- stating that it was in good faith and in normal course.

22. The third allegation with regard to handling the Account of one Smt. Yashodamma Account No. 51988; transferring Rs. 15,000/- from the said account without authorisation for his personal benefit - said Yashodamma is not examined. According to the 1st Party she is none other than his own sister-in-law and had unequivocal authorisation from her and he has handed over the amount to her. It emerges from the record that, without preparing the slips he made entry in the Computer; the entry was verified under the Computer code of Sh. Srivatsa.

The fourth allegation was, he deposited 2 clearing cheques for Rs. 6,500/- and Rs. 60/- to the Account of Smt. Vijayalaxmi Thimappa on 23.12.2003; he prepared the credit slip. The Account is debited with Rs. 6500/- with the narration "CC RETD" and the corresponding credit has gone to his OD Account even though there was no cheque return for Rs. 6,500/-. Again on 30.12.2003 there was a credit entry for Rs. 6,500/- in SB 51592 with the narration 'by clearing'; the actual credit came from his OD Account. In his statement dated 18.08.2004 he admitted the entire responsibility stating that the Account holder is his sister-in-law.

23. The fifth allegation was he has introduced the Account number 57771 of Smt. Manjula without address proof; on 18.04.2004 there is a debit of Rs. 3,800/- from the said account with the narration "GA", the corresponding credit has gone to the OD 10220 of Anjanppa, in the slip bundle of 18.04.2004 there were no slips pertaining to the said transaction. In his statement he admitted his responsibility for transfer of funds and for entering the transaction in the Computer without authorisation of the Accountholder. But said account holder was not examined by the Management.

The sixth allegation was, there was a debit of Rs. 3,900/- from the SB account 63685 of Smt. Amul R. and Sh. Narendrakumar with the narration as "To loan" and the corresponding entry was given to OD Account 10220 of Sh. V Anjanappa by showing the narration as loan, no slips were available in the slip bundle, in his statement of 18.08.2004 he admitted that he has not prepared slips for the transaction and owed the responsibility of giving wrong narration and passing the transaction in the Computer by himself, the Accountholders in their statement given to the Investigating Officer had ratified the transactions, the transaction was corroborated by the documentary proofs. Sh. Narendrakumar was examined as Defence witness. During cross examination the witness had stated that they have not given letter of authority to the 1st Party to carry out the transaction, he had also stated that he had not given either cheque or letter of authorisation to the Bank but asked Sh. Anjanappa to transfer sum of Rs. 3,900/- on 07.12.2003 from his SB to OD Account of Sh. Anjanappa.

24. The Seventh allegation was Sh. Venkatesh, (72111) PTE of Jayanagar Shopping Complex Branch is maintaining SB Account No. 621111. An amount of Rs. 2,800/- was transferred from SB 55395 of . Narayanamma to that of Venkatesh; Sh. Anjanappa at 4 pm informed Venkatesh that Rs. 2,800/- has been credited to his account and requested to withdraw the same through ATM, he transferred the amount from the SB Account of Smt. Narayanamma without authorisation and without preparing slips. The said transaction is wholly admitted by Sh. Anjanappa in his statement.

He debited amount of Rs. 69,300/- + Rs. 5,000/- on even dates from the SB Account No. 55395 of Smt. Narayanamaa and credited to his OD Account without any authorisation / letter from the accountholder, no slips were available in the slip bundle of the said date. The entries are made by CSE verified in the computer node of Sh. Srivatsa and Sh. Raghu Officers respectively. Again on 25.03.2004 there was a debit of Rs. 28,600/- in the OD Account of CSE and the corresponding credit has gone to the account of Narayanamma without slip, same is verified under password of Sh. V P Pai; said Narayanamma is not examined as a witness for the Management. The CSE claims that she is none other than his own mother in law, at her request he transferred the amount to the Account of Venkatesh, later Venkatesh helped him by withdrawing the amount of Rs. 2,800/- from his ATM Card etc. He has produced the statement given by Narayanamma addressing the Manager ratifying the transaction, same is marked as DEX-8.

25. The eighth allegation was, Sh. Dodde Gowda and Smt. N Kantha maintained SB Account 58434 with the Branch; on 13.04.2004 Rs. 9,750/- was debited to the said SB account and corresponding credit has gone to OD Account of 10220 of the CSE he has entered into the computer and verified the entry in the computer node of Sh. K Manjunath / Manager; he debited sum of Rs. 17,250 to the SB account of Smt. Narayanamma and credited Rs. 7,500/- to the loan account GA02EIHGS010 of Smt. Amul R and Rs. 9,750/- to SB Account 58434 of Doddegowda and Smt. N Kantha. These entries are posted by CSE and verified in the computer node of Sh. N Chandrashekar / Officer and the slips are not available in the slips bundle. Smt. Kantha was examined as defence witness and she ratified the transaction handled by the 1st Party in her account; during cross examination she deposed that she neither handed over a cheque nor gave an authorisation letter to the 1st Party to withdraw the money.

The ninth allegation was, he introduced SB Account 54806 the Account holder is Smt. Vishala; he opened SB account 63389 in the name of Smt. Usha; the address of the accountholders furnished is one and the same and he had filled up the account opening form. When the TDS for the accounting year 2003-2004 was deducted from those deposits he persuaded the concerned Officer to re-credit the TDS Deducted stating that he had given declaration in form 15-H/G to the Branch which is misplaced. Accordingly, the officer obliged, without Assistant General Manager's concurrence the entry was reversed. Subsequently, he admitted that the Accountholder of both SB Accounts is the common person i.e. his wife. Thus, he misguided the Bank about the identity of the Depositor. He attempted to transfer and misappropriate SL-TDS amount lying in the Branch by credit to the 2 different SB Account opened by him.

The 1st Party examined the lady as his defence witness, who came up with the version that before marriage her name was Vishala and after the marriage it is Usha. But during cross examination she admitted the suggestion that before her marriage her name was Vishalakshamma, but as per law her name is not changed.

26. The last allegation was he availed a loan of Rs. 35,000/- under DPN Scheme for applying to the shares offered by the Canara Bank under Employees' Quota and was allotted 700 shares; he sold the shares without crediting the share proceeds to the DPN loan outstanding, contrary to the undertaking letter given by him. He concealed the above fact of sale of shares and misappropriated the proceeds without informing the Bank. This allegation was never rebutted.

27. The Enquiry Officer has commenced from the premise of appreciation of documentary evidence thereafter the oral evidence and the defence set up. The written brief submitted by the 2nd Party was also considered but not appreciated. Without recording separate finding for each issue, he concluded his Report with a global finding that "CSE is found guilty of the charges"

28. Barring the transaction pertaining to the complainant Dr. V Basaveswara Rao and the last allegation of none compliance of the undertaking to deposit the sale proceeds of the shares to the loan account, all other transactions alleged pertains to his family members which is ratified by them. 1st Party has enough to suspect the integrity of the investigation. Even otherwise the credibility of the evidence placed during the enquiry that has to be considered for recording the findings. In this case there is no direct evidence that the 1st Party has fraudulently withdrawn Rs. 20,000/- from the account of SB 41593 of Dr. V Basaveswara Rao. The Report of the Investigating Officer is MEX-1; the statement of the 1st Party given in writing to the Investigating Officer is marked as MEX-2. Of course, the complainant at whose complaint the whole investigation commenced is not examined; it is to be recalled that he is not a local person; he is an NRI, his complaint is marked as MEX-43, as per his complaint averments he has maintained the account for 16 years and no cheque book was issued to him. From the bank records also there is no proof of issuing a cheque book on his account, it is also a fact that all the 3 transactions were made in the PC positioned in Teller's Cabin, and the cash part of the transaction is partly verified under the Password of Smt. Shashi / Special Assistant and further verified by Sharadamba / Officer; the cheque numbers entered are not pertaining to the Accountholder and the instruments are also not available with the cash paid slip bundle of the said date. In his written statement the 1st Party has not disputed creating, entering and posting the 3 debits to the SB NRE 41593, interestingly the cheque numbers are not shown in the cheque number column since the computer does not allow transactions and the cheque numbers are shown under narration; the cheque book issued register does not contain the entry for issuing the cheque books to the party, cash payment waste in duplicate is not created by him which had to be acknowledged by the Supervisor; Smt. R Shashi had stated that she is not given the cheques for verification and somebody has verified those cheques under her password when the system was not locked during her absence on her seat. The statement of this lady is hypothetical, somebody using her password in her PC during the office hours that too in respect of the disputed transaction of 29.04.2004 is hypothetical. However, fact remain that CSE has allowed withdrawal of Rs. 7,000/- + Rs. 7,000/- + Rs. 6,000/- at a stretch in respect of one person, though cheque book was not issued on the said account. The 1st Party attempts to take the benefit that they are not following the procedure contemplated by the Manual of Instruction, fact remains that since the cheque book was not issued he could not enter the cheque numbers in the concerned column but entered in the narration column, he should have been alert when the system does not allow entry of cheque number and should have diligently verified the genuineness of the instruments produced before him; it is not his case that in the Teller system he used to accept the withdrawal slips other than the cheque in respect of NRE Account against the mandates of Manual of Instruction. But as regards holding him guilty of fraudulent withdrawal of Rs. 20,000/- by making fictitious and misleading entries is not supported with direct evidence, nobody has seen him using the System of Smt. Shashi on 29.04.2004. The lapses on the part of the verifying Clerk in allowing some other person to use her password and the system will not link the chain of events. To say that he has fraudulently withdrawn the amount by making fictitious and misleading entries without their being some concrete evidence is illogical. What is proved

from the available evidence on record is, he has allowed withdrawal of Rs. 7,000/- + Rs. 7,000/- + Rs. 6,000/- at a stretch without cheque leaves issued from the NRE SB Account 41593.

29. Regarding second issue what remains undisputed is, making entries without the cheque leaves and receiving a part of the amount as advance payment. According to Sh. H G Mariswamy it was Rs. 10,000/- on 06.02.2004.

In respect of the remaining issues there is no conclusive proof that he has fraudulently withdrawn customers' amount amounting to Gross Misconduct. Interestingly, he did not adduce evidence to deny the contents of his own statements at MEX-4 given to the Investigating Officer and explanation to the complaint MEX-43 given to the Disciplinary Authority / AGM. It stands to prove that he had introduced his wife to the Bank under two names without disclosing his relationship to her. He has handled the accounts of his relatives without their written authorisation; he had not abided as per his own undertaking by not depositing the sales proceeds of the share to his loan account. Without prior knowledge or consent of MW-1, he transferred the amount to the account of MW-1 and got the same withdrawn through ATM Card. All the transactions are ratified by the concerned officers but the instruments for the said day are missing. His defence that the Branch was not following the Manual of Instructions will not shield his lapses in not posting the Cheque numbers while passing the instruments.

30. Though the conclusion of fraudulent transaction is drawn on assumption, what is to be noted is the suspecting conduct of the 1st Party in introducing two accounts in the name of his wife without disclosing his relationship in the Account opening form. He has posted entries without posting the cheque numbers. Though it was not incumbent upon him to pass the instrument of which the cheque numbers are not available, he is attempting to get the benefit of stray answer extracted during the cross examination of management witness that when there was heavy work the bills were not verified and would be examined on the following day, but none of the witnesses has stated that it was the day to day state of affair in the Branch. Though the conclusion of the Enquiry Officer holding him guilty of the entire charges cannot be endorsed, the irregularities in his official duty as a Teller Cashier in posting the cheques, handling the accounts of his relatives without their written authorisation, opening two accounts in different names of his wife which smacks some hidden agenda and intentionally committing irregularities. The existence of the Banking system depends in its systematic administration and governance, for that integrity of its employees' is the soul. The bank handles the public money and if it loses its credibility in the eyes of its customers that would be catastrophic for its very existence. Viewed from that view of the matter the attitude of the 1st Party is not Bench mark. He bends the rules and procedure to this convenience. That comes in the way of exercising jurisdiction under Sec 11-A of 'the Act' to intervene with the punishment order.

AWARD

The reference is rejected.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 22nd May, 2020)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 30 जून, 2020

d k vk 499.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केनरा बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ सं. 59/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 30.06.2020 को प्राप्त हुआ था।

[सं. एल-12012/93/2006-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 30th June, 2020

S.O. 499.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 59/2007) of the , *Bangalore* as shown in the Annexure, in the industrial dispute between the management of *Canara Bank*, and their workmen, received by the Central Government on 30.06.2020.

[No. L-12012/93/2006-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 28TH MAY, 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 59/2007

I Party	**II Party**
Sh. M. G. Nagaraj, S/o J.V. Gurappa, Raghavendra Nilaya, House No. 1148, Kattar Palya, Kolar - 563101.	The General Manager (P), Canara Bank, Head Office, Personnel Wing, I.R. Section, 112, J.C. Road, Bangalore - 560002.

Appearance

Advocate for I Party : Mr. B.D. Kuttappa

Advocate for II Party : Mr. T.R.K. Prasad

AWARD

The Central Government vide Order No. L-12012/93/2006-IR(B-II) dated 01.05.2007 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

> **"Whether the action of the management of Canara Bank in imposing the punishment of compulsory retirement from the services of the Bank on the workman Sh. M. G. Nagaraj, Ex. TCFC, Canara Bank, Bagepally Branch, w.e.f. 03.05.2003 is legal and justified? If not, to what relief the workman is entitled and from which date?"**

1. The 1st Party workman is a former employee of the 2nd Party / Canara Bank who is compulsorily retired from service as a measure of punishment. Before imposing punishment, he was issued charge sheet followed by duly held Domestic Enquiry. On the finding of the Enquiry Officer holding that the 1st Party committed gross misconduct within the meaning of Chapter XI, Regulation 2A Clause (i) of Canara Bank Service Code, the Disciplinary Authority imposed the Punishment Order and his Appeal (filed belatedly) came to be rejected. At the time of his compulsory retirement he had put in 18 years of service as TCFC (Clerk).

2. In his claim petition the workman questions the validity of the Domestic Enquiry, the fairness of the Enquiry Report holding him guilty of misconduct and the punishment Order. According to him, the penalty of Compulsory Retirement on the trivial charge was harsh, excessive and highly disproportionate and unsustainable. The Punishment Order amounts to victimisation and unfair labour practice; he is innocent of misconduct alleged; he is unemployed and has a dependent family and now virtually on street without any income.

3. The 2nd Party denied all the allegations averred in the Claim Statement and justified the action taken against him.

4. On the basis of the rival stands, a Preliminary Issue in respect of fairness and correctness of the Domestic Enquiry was raised, tried and adjudicated by answering the issue in favour of the Management.

5. The 1st Party workman thereafter adduced evidence stating that, ever since termination from service he is not employed anywhere because of the stigma attached to his career and he could not get employment.

6. To sum up the allegations against him, while working at kaiwara Branch between 17.08.2000 to 07.03.2002,

(i) He failed to account Rs. 5,000/- on 31.10.2001 as cashier which he received to the credit of SB 37/17 of customer Sh. Narayanaswamy despite affixing seal and signature on pay in slip of Rs. 6,500/- as acknowledgement of receipt.

(ii) He altered the credit challan of Rs. 6,500/- to Rs. 1500/-in his own handwriting.

(iii) He temporarily misappropriated the said amount by altering the SB Challan....

(iv) He has not submitted his explanation called for in the matter by Staff Section (W) BCO.

During enquiry, the CSE was assisted by his Defence Representative. 6 witnesses were examined for prosecution and 18 documents were marked. The CSE was the sole witness for his defence and was cross examined by the Presenting Officer.

7. The complainant / Sh. Narayanaswamy was the first witness. The statement given by him before the Investigating Officer was identified by him as MEx-1. His case was, himself and his father are the regular customers of the Kaiwara Branch; Sh. Anjanappa / his father had KDP 09/96 for Rs. 10,000/- on 31.10.2001; the KDR was tendered for payment; Sh. Anjanappa wanted that out of the maturity value of Rs. 10,000/- a sum of Rs. 5,000/- be re-deposited as KDR Fixed Deposit and remaining Rs. 5,000/- be paid to the complainant who has a SB A/c 3717 in the said Branch.

During the Domestic Enquiry MW-1 stated that, he remitted Rs. 1,500/- vide Bank challan on 31.10.2001; he got another challan to take Rs. 5,000/- through the Bank Official Sh. Shivaram / MW3 to submit the same to the cashier / CSE; he was informed by the CSE that MW-2 / another Official has changed the figure as Rs. 6,500/- and he may cancel his challan, this was at 12:30 in the morning hours. The CSE told MW-3 that witness has remitted Rs. 1,500/- by cash and the balance of Rs. 5,000/- be entered in the receipt waste (MEx-13); he told the witness that he can cancel and tear off the challan. MW1 went to the Branch on 03.11.2001 to withdraw the amount from his account and noticed only Rs. 1,500/- was credited to his account; he complained to the Manager; on enquiry by the Manager, the CSE told that he has paid the remaining amount to MW-1; on further deliberation with the Officials, CSE admitted to deposit the balance of Rs. 5,000/-.

MW-2 was the then Clerk at the Branch who prepared the credit challan for Rs. 5,000/- toward SB A/c 3717. Through her, the statement given by her to the Investigation Officer and KDR 258/01, credit slip and the KDR application of Sh. Anjanappa for Rs. 5,000/- and receipt waste dated 31.10.2001 were marked as MEx-5 to MEx-8. Through her, MEx-7 / the account opening form submitted by Sh. Anjanappa / father of MW-1 was marked. As per her statement given to the Investigating Officer (Ex MEx-5) she had cleared the KDR account of Sh. Anjanappa, maturity value of Rs. 10,000/- and prepared the dummy slip, she prepared one ordinary credit slip to new KDR account; she entered the credit slip of Rs. 1,500/- in the waste sheet and gave the same to the counter; at 2:30 pm MW1 came and told to adjust cash of Rs. 5,000/- to his SB A/c 3717; Shivaram (MW3) prepared SB challan for Rs. 5,000/-; the CSE told her to alter the challan Rs.1,500/- to Rs. 6500/-, but she refused; but he insisted her to do so; she did not alter in the challan and altered in the waste sheet and at his assurance that the remaining cash of Rs. 5,000/- (proceeds KDR) is in his custody; She was informed by CSE that, he has not given Rs. 5,000/- to MW1 and asked her to cancel Rs. 5,000/- and credit only Rs. 1,500/-; but while closing and tallying the account CSE told that he has given Rs. 1,500 to MW-1; she accepted the challan and altered the figures in the receipt waste; accordingly, she initialled in the ledger sheet and reduced the balance of credit from Rs. 6,500/- to Rs. 1500/-.

MW-3 / Sh. Shivaram was another official from the Branch who had stated as per MEx-9 that, on 31.10.2001 he prepared a challan for Rs. 1,500/- on behalf of MW-1; at the instance of CSE, he altered the challan for Rs. 6500/-; as per the challan, Rs. 1,500/- was remitted by cash and remaining Rs. 5,000/- was the proceeds of KDR; he posted the same in the ledger; CSE told him that there is shortage of Rs.5,000/- in cash and MW-1 has received the said amount and the challan has to be changed from Rs. 6500/- to Rs. 1500/-; accordingly, he changed the figure in the ledger for Rs. 1,500/-; while he changed the figures, MW-1 was not present;

MW-4 was the then Manager of Kaiwara Branch who had stated that, on 03.11.2001, MW-1 came to the Branch, tendered his pass book for updating the entries and noticed the changes; on 05.11.2001, Rs. 5,000/- is credited to the SB 3717 with the signature of Sh. Narayanaswamy.

MW-5 is the Investigating Officer.

MW-6 was the Officer from the Circle Office. He identified the letter addressed by the Circle Office to the CSE and the reply submitted by him.

8. The CSE gave his statement to the effect that, on 31.10.2001, he was outside the cash cabin when MW-1 along with the Official Shivaram approached him and paid Rs. 1500/- along with pay-in-slip to his SB A/c 3717. He collected Token from Rajeshwari in respect of the majority amount of Rs. 10,000/- from KDP account; he left the Branch and returned after 20 minutes; the payment of KDP along with new KDR for Rs. 5,000/- came to him for cash payment of remaining Rs. 5,000/-. MW-1 came to the Branch after branch hours by that time he had total the receipts in the staff book; MW1 at 1:45 pm gave the token No. 20 for the payment and he made payment of denomination 100 * 50 i.e., Rs. 5,000/- to him; he collected the same and left; however, came back after 10 Min saying that he will credit Rs. 5,000/- to SB A/c 3717. When the CSE

informed him that, even if the amount is accepted as late cash, it will go to his account only on 3rd November, since 1st November is holiday and 2nd November is NW day. At the insistence of Sh. Shivaram, he told him not to make a new challan but to alter the old challan from Rs. 1,500/- to Rs. 6,500/-; accordingly, Sh. Shivaram altered the figures form Rs. 1,500/- to Rs. 6,500/-; since, entries were not updated in the ledger, MW-1 was asked to come next day to the Branch to make entry in the pass book; the customer exited from the Branch without remitting the amount of 1500/- since Sh. Shivaram and he did not notice the exit of MW-1 from the counter; while closing the cash waste, he came to know the difference of Rs. 5,000/- and asked Sh. Shivaram whether MW-1 gave the cash of Rs. 5,000/- to him for which he replied that it must be with you only (witness); but payment was given to Narayanaswamy; himself and Sh. Shivaram searched for MW-1, but unable to find him; then he changed the challan back from Rs. 6,500/- to Rs. 1,500/- and Smt. Rajeshwari made correction in the receipt waste.

9. What weighted for the Enquiry Officer to find the CSE guilty of the misconduct was, the challan for Rs. 6,500/- was duly stamped and signed by CSE and he has posted the same. Sh. Shivaram / MW-3 had stated that, the customer had not received the amount on 31.10.2001 and the amount was in the custody of the CSE. He had insisted MW-2 / Smt. Rajeshwari to change the figure to Rs. 6,500/- in the receipt waste. The Enquiry Officer drew inference from the above evidence that the sum of Rs. 5,000/- belonging to customer was in the custody of CSE. He had acknowledged the amount of Rs. 6,500/- by affixing the pay in challan for Rs. 6,500/- ; he had entered in the cash receipt shroff / MEx-13 as Rs. 6,500/- towards cash received. CSE had insisted to change the entries of earlier cash remittance of Rs. 1,500/- to Rs. 6,500/- without obtaining the separate cash challan for Rs. 5,000/-.

The defence evidence was silent as to the reason for not accepting credit challan of Rs. 5,000/- prepared by MW-3 on behalf of MW-2. He had altered the credit challan of Rs. 6,500/- to Rs. 1,500/- in his own hand writing without authorisation and authentication of the account holder and without bringing the same to the notice of the Manager. The Enquiry Officer observed that, "under any circumstances alteration shall not be made without authorisation and authentication of the concern once cash receipt seal is affixed on the challan that amounts to tampering the records of the Bank".

As per his own evidence the 1st Party had admitted to remit Rs. 5,000/- to SB 3717 on 05.11.2001 since 04.11.2001 was a holiday. As per the statement of CSE, on 05.11.2001Rs. 5,000/- was paid by borrowing from NNND Agent's wife's account which act was disputed by the Manager (MW-4). Thus, the Enquiry Officer landed up at the conclusion that *"CSE has temporarily misappropriated the said amount of Rs. 5000/- by altering the SB challan."* The Enquiry Officer also noticed that the CSE had not submitted his reply to the explanation called for by Staff Section (W) Circle Office, Bangalore. He had not requested for extension of time but sent reply after a delay of more than 2 months.

10. The entire finding is founded on the oral and documentary evidence adduced during the enquiry. None of the documents produced were disputed. As such no financial loss is caused either to the customer or to the Bank. The amount in question is made good by the 1st Party workman himself. Though there is some merit in his contention that the alleged misconduct of temporary misappropriation of funds is trivial in nature not calling for compulsory retirement.

Still one cannot lose sight of the fact that, the 1st Party was holding a responsible job and was handling public money and public records. He had indulged in alteration of a public record / credit challan without authentication and authorisation of the consent. The Enquiry Officer was well within his limits while drawing inference that his act amounts to tampering of Records of the Bank. Whether or not mens rea was operating for misappropriation of Bank property, things stand clear that he utterly failed to perform his duty as a Cashier to the benchmark.

11. The 1st Party in his written submission has pointed out that, there was no evidence to Enquiry Officer's observation that CSE had confirmed that "*the customer Narayanaswamy even after discussion the matter with me personally taking to staff room making that amount was remitted by me – the CSE agreed to remit the amount of Rs. 5,000/- to SB A/c on 05.11.2001 because 04.11.2001 was a Sunday.*"

The above contention is partially incorrect. During his cross examination dated 31.05.2002, it has come up that firstly, he had denied to receive the cash of Rs. 5,000/- and informed that it they receive it as late cash it will come to customer's account on 3rd November since 1st November is holiday and 2nd Nov is Non Working day. However, his further cross examination evidence was that, at the insistence of Sh. Shivaram he had told him not to make new challan and alter the old challan from Rs. 1,500/- to Rs. 6,500/-.

Reading in between lines, the above piece of evidence drives inference that the CSE since accepted the cash and proceeded to alter the documents and there is no dispute to the fact that in his statement given before

the Investigating Officer he had stated that the customer insisted for his 5000/- on 3rd and told him to come on 5th (Monday); on 5th he arranged credit of Rs. 5,000/- as late cash.

It has come in his cross examination (page 3) that,

"Manager intervened and consoled the customer and said that we will solve the problem amicably. Myself and Shivaram went to the stock room and discussed about the matter. The customer did not oblige and he maintained that he has remitted the amount of Rs. 5,000/-, so the balance in his SB account must be available. We came to the Manager and the Manager asked me to settle the amount to the customer, lest it should become a problem. I asked the customer to come on 5th November, 2001 since 4th November was a Sunday…."

Hence, it is clear that the Enquiry Officer did not borrow any extraneous material for landing up to the conclusion.

12. It is the tenets of Industrial Adjudication that, once the misconduct is proved against an employee in duly held Domestic Enquiry, then imposition of appropriate punishment is within the propriety of the employer unless it is perverse or shockingly disproportionate. There are catena of judgements by which Higher Courts have held that, if the employer more particularly Nationalised Bank losses confidence in his employee, there is no question of intervention by the Industrial Adjudicator. The workman with or without culpability tampered the Bank records, though he made good to the loss subsequently, the trust under which a customer deposits his money with the Bank is shaken which in all probability affects the business of the Bank. He is not dismissed from service but prematurely retired with superannuation benefits. I am convinced that the punishment commensurates with the gravity of misconduct proved and is legal.

AWARD

The reference is rejected.

(Dictated to o/s LDC, transcribed by her, corrected and signed by me on 28th May, 2020)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 30 जून, 2020

dk- vk- 500.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक आफ महाराष्ट्र के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 80/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 30.06.2020 को प्राप्त हुआ था।

[सं. एल-12011/81/2011-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 30th June, 2020

S.O. 500.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 80/2012) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Bank of Maharashtra and their workmen, received by the Central Government on 30.06.2020.

[No. L-12011/81/2011-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/80/2012

Present: P. K. Srivastava H.J.S..(Retd)

The President
Bank of Maharashtra Employees Union,
C/o of Bank of Maharashtra, Regional Office,
688, M.G. Road,
Indore (M.P.) …Workman

Versus

The Assistant General Manager,
Bank of Maharashtra,
688, M.G. Marg,
Indore (M.P.) ...Management

AWARD
(Passed on this 19th day of March-2020)

As per letter dated 9-7-2012 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D.Act, 1947 as per Notification No. L-12011/81/2011-IR(B-II). The dispute under reference relates to:

"***Whether transfer order of 22 members of Bank of Maharashtra Employees Union listed in annexure enclosed, by the management of Bank of Maharashtra is illegal against the Bi-Partite Settlement, 0a1mount to unlawful transfers? To what relief the members of the Union are entitled to? .***"

1. After registering the case on the basis of reference, notices were sent to the parties.

2. The case of the workman as stated in his statement of claim is that no Memorandum of Understanding (MOU) was signed by the Management with the Union after 9th Bi-Partite Settlement for administrative transfers and no exercise for surplus/excess pocket was conducted by the Bank/Management prior to issuing transfer order of clerical staff in 2010, hence the said transfers are unfair labour practices.

According to the Management there was no need to sign a separate Memorandum of Settlement as general clause of 9th Bi-Partite Settlement under the paragraph terms of settlement clearly deals this situation as under:-

1." In respect of 46 Bank Listed in scheduled 1 to this memorandum of settlement except the State Bank of India, Indian Overseas Bank and Bank of Baroda the provisions of the Sastry Award in reference No.S.R.O. 35 dated 5th January 1952, notified on 26th March 1953 as finally modified and enacted by the Industrial Dispute (Banking companies) Decision Act, 1955 the Industrial Dispute (Banking companies) Decision Amendment Actm1957 and the Provision of the award of the National Indusrial Tribunal presided over by Mr. Justice K.T.Desai in Reference No.1 of 1960 which Award inter alia modifies certain provisions of the Sastry Award (hereinafter referred to as the Awards) as modified by the settlements dated 19-10-1968, 12-10-1970, 23-7-1971, 8-11-1973, 1-8-1979, 31-10-1979, 21-4-1980,8-9-1983, 17-9-1984, 5-1-1987, 10-4-1989, 29-6-1990, 16-7-1991,29-10-1993, 1-2-1995, 14-12-1996, 28-11-1997, 27-3-2000, 10-4-2002 and 2-6-2005 shall continue to govern the service conditions except to the extent the same are modified by this Settlement."

2. (i) The provision of the awards, the first Bipartite Settlement dated 19-10-1966 and /or other subsequent settlement(s) including the above mentioned separate settlements hereinafter collectively referred to as said settlements shall stand modified or superseded to the extent and in the manner detailed hereunder:-

(ii) Povisions in the aforesaid Award/Settlement which have not been amended/modifies or superseded by this settlement shall continue to remain in force.

As stated above in the 9th Bipartite Settlement dated 27-4-2010, in para 3(ii) all other provision and conditions will remain in force. Bank has earlier signed 8th Bipartite Settlement dated 2-6-2005, in this settlement there is Memorandum of Settlement regarding the deployment of staff, under which clause Opposite Party and All India Bank Employees Association to whom First Party is affiliated has agreed for Transfer of the Employees and Bank has made policy on basis of 8th Bipartite Settlement dated 2-6-2005, which is not amended in the 9th Bi-partite Settlement dated 27-4-2010. Therefore the provision of settlement regarding deployment of staff will remain same as per 8th Bipartite Settlement dated 2-6-2005.

3. In the reply of Second Claim it is submitted that Bank has transferred 22 Employees as per 8th and 9th Bipartite Settlement (Annexure 1) and as per Head Office Guidelines (Annexure-2). The details of 22 employees transferred as per the provisions of the Bi-Partite Settlement are annexed as Annexure 3. Thus it may be observed that the Opposite Party has issued the transfer orders of these 22 employees as per the provisions of Bi-Partite Settlement and the guidelines issued by the Bank.

Accordingly the Management has requested that the reference be answered against the workman.

4. During the course of hearing the workman/Union absented himself, hence the reference proceeded ex-parte against the Union/workman. No evidence was filed by the Union in support of its claim. Management filed affidavit of its witnesses which is un-cross-examined.

5. At the stage of argument also none appeared for the Union, hence learned counsel for Management was heard and records were perused by me.

6. **The reference is the point for determination in the case in hand.**

7. The primary burden to prove its case is on the claimant/Union who has not filed documents or oral statement to prove his case. The Management has filed copy of 9th Bi-Partite Settlement (relevant pages) and Bank guidelines(relevant pages). Perusal of these provisions supported with an affidavit goes to show that the Management was within its right to transfer its employees which is an incident of service.

8. On the basis of the above, discussion, the transfer orders of the 22 Members of Employees Union as listed in the annexure to the reference is held legally justified and they are not entitled to any relief.

9. Accordingly, following award is passed:-

A. The action of the management in issuing order of transfer to 22 members of Bank of Maharashtra Employees Union listed in annexure enclosed, by the management of Bank of Maharashtra is held to be legally justified.

B. The workman are held entitled to no relief.

P. K. SRIVASTAVA, Presiding Officer

DATE: 19.3.2020

नई दिल्ली, 30 जून, 2020

d k- v k- 501.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मै. पी. एस. ए. सीकल कन्टेनर टर्मिनल, वी. ओ. सी. पोर्ट ट्रस्ट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ सं. 87/2019) को प्रकाशित करती है जो केन्द्रीय सरकार को 30.06.2020 को प्राप्त हुआ था।

[सं. एल-44011/02/2019-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 30th June, 2020

S.O. 501.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 87/2019) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the industrial dispute between the management of M/s. PSA SICAL Container Terminal, VOC Port Trust and their workmen, received by the Central Government on 30.06.2020.

[No. L-44011/02/2019-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHENNAI

ID No. 87/2019

Present: DIPTI MOHAPATRA, LL.M., PRESIDING OFFICER
Date: 18.02.2020

The General Secretary
Tuticorin Port Trust Democratic Staff Union
VOC Port Trust
Tuticorin-628004 : 1st Party/Petitioner Union

AND

The Terminal Manager
M/s. PSA SICAL Container Terminal
7th Berth, VOC Port Trust
Tuticorin : 2nd Party/Respondent

Appearance:

For the 1st Party/Petitioner Union : None

For the 2nd Party/Respondent : Advocate M/s. S. Bazeer Ahamed, C. Yamini

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-44011/02/2019 – IR (B.II) dtd. 09.05.2019 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the action of the Management of M/s. PSA Sical Terminals Limited, VOC Port Trust, Tuticorin in effecting promotion without any monetary benefit or job title change is legal and justified? If not, to what relief, the concerned workmen, who are promoted without any monetary benefit are entitled to?"

2. On receipt of the above reference from the appropriate Government, the dispute on reference is registered in ID No. 87/2019 and notices were issued to both the parties for their appearance fixing the case to 08.07.2019. Since then, the case is dragged for such a long period till 18.02.2020 intervening almost 5 adjournments i.e. 3 adjournments in the year 2019 viz. 30.07.2019, 30.09.2019 & 05.11.2019 and 3 adjournments in the year 2020 i.e. 03.01.2020, 07.02.2020 & 18.02.2020. It appears even if for the interest of justice the Tribunal suo-moto afforded sufficient opportunities to the Petitioner's Union (represented through the General Secretary), there was no progress held in the proceeding. Neither the Authorized Representative, the General Secretary on behalf of the Union nor any member of the Petitioner Union appeared before this Tribunal nor at any point of time moved any petition for adjournment to file their Claim Statement. Thus, it is held that the neither the Petitioners individually nor being represented through the General Secretary of the Union are interested to proceed with the dispute raised in the reference. The non-appearance and non-participation in the proceeding by the Petitioners or their Authorized Representative, constrained the Tribunal not to repost the proceeding to any other date for the same purpose.

In view of the discussion held in preceding paragraph, it deems there exists no dispute for adjudication as referred by the Appropriate Government.

In the result the ID stands dismissed.

An Award is passed accordingly.

(Dictated and transcribed by PA and corrected and pronounced in the open court on this day the 18th February, 2020)

DIPTI MOHAPATRA, Presiding Officer

नई दिल्ली, 1 जुलाई, 2020

का.आ. 502.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स निर्देशक, केंद्रीय कृषि अनुसंधान और प्रशिक्षण संस्थान, मैसूर बैंगलोर, और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बैंगलोर के पंचाट (संदर्भ संख्या 145/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 22.05.2019 को प्राप्त हुए थे।

[सं. एल-42011/114/2007-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 1st July, 2020

S.O. 502.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 145/2007) of the Central Government Industrial Tribunal cum Labour Court, Bangalore as shown in the Annexure, in the Industrial dispute between the employers in relation to The Director, Central Sericulture Research and Training Instt, Mysore Bangalore & Others, and their workmen which were received by the Central Government on 22.05.2020.

[No. L-42011/114/2007-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 14TH MAY, 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 145/2007

I Party	**II Party**
Smt. Devakumari, W/o Shri Lalu, No. 80, N.C Colony, Bore Ban Bank, 3rd Cross, Benson Town Post, Bangalore - 560 056.	The Director, Central Sericulture Research and Training Instt., Srirampura, Manandavadi Road, Mysore - 570 008.

Appearance

Advocate for I Party : Mr. V. S. Naik

Advocate for II Party : Mr. N. S. Narasimha Swamy

AWARD

The Central Government vide Order No. L-42011/114/2007-IR(DU) dated 19.10.2007 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether the action of the management of Central Sericulture Research and Training Institute in terminating the service of Smt. Devakumari w.e.f. 25.11.2003 is legal and justified? If not, to what relief the workman is entitled to?"

1. The 1st Party workman claims that, she was appointed as Lower Division Clerk on 19.12.1991 in the 2nd Party; Disciplinary Action was initiated against her on certain allegations by holding a Departmental Enquiry, the Enquiry Officer after conclusion of enquiry submitted his report that the Charge is established. After issuing show cause notice the 2nd Party imposed the punishment of removal from service. In appeal the order of the Disciplinary Authority was confirmed. The allegation was about unauthorised absence from 17.04.2001 onwards. But the said absence was on account of illness, she had submitted leave letter and medical

certificates in support of her statement but the Disciplinary Authority did not appreciate the same. The Disciplinary Authority and the Appellate Authority did not examine the matter properly and the action of the 2nd Party is arbitrary and violative of rules of natural justice, she is not gainfully employed.

2. The 2nd Party counters the claim on the following ground:

that while working at CSTRI, Bangalore she availed various kinds of leave on many occasions between 02.04.1996 to 04.04.2001, her unauthorised absence was treated as 'Dies non' with warning to desist from such activity in future, but she did not improve. Hence, the Departmental Enquiry was conducted. However, by taking lenient view minor punishment was imposed on her, even thereafter she remained absent from duty unauthorisedly from 27.12.1999, 19.01.2000 to 21.01.2000, 06.12.2000 to 07.01.2001; therefore her Annual Increment was postponed for 1 year by treating all her unauthorised absence as 'Dies non'. Still she was not regular in service. She was transferred to RSRS, CSB, Kodathi, Bangalore in public interest, with advise to report to duty immediately; while working at RSRS, CSB, Kodathi she remained absent from 17.04.2001 and never attended her official duty inspite of several instructions. She had not given prior intimation to Leave Sanctioning Authority; she was sent telegram dated 24.04.2001 to report back for duty, she sent telegram requesting to extend medical leave for another one week; she was given another telegram dated 22.05.2001 directing her to report back to duty, they received letter from her on 08.05.2001 requesting E.O.L for 3-4 weeks from 17.04.2001 vide letter dated 21.04.2001. To find out the genuineness of her illness, she was referred to Medical Board, Bangalore vide letter dated 22.05.2001, copy was marked to Directorate of Health and Family Welfare, Ananda Rao Circle, Bangalore. In turn the Directorate of Health and Family Welfare referred her case to Bowring and Lady Curzon Hospital, Bangalore vide letter dated 02.06.2001. 2nd Party requested the Medical Authority to forward the Medical Examination Report of the 1st Party; the Board informed that she has not at all attended the Medical Board on the scheduled dates given by them. 2nd Party again sent reminder to her vide memo dated 29.10.2001 to report to duty. The 1st Party informed that the Hospital Authorities did not attend her medical examination due to their pre-occupation; she was informed to appear before the medical board on 04.12.2001. The Director of CSR&TI, Mysore vide memo dated 04.01.2001 advised her to report to duty within 7 days; she reported to duty on 11.01.2002 after lapse of 1 year but did not submit explanations to the memo issued by the 2nd Party; she attended office on 11th, 14th to 16th and 19th January 2002 and thereafter remained absent unauthorisedly. Again, she came to the office on 6th and 7th February 2002, signed the Attendance Register and left the office without doing any work, thereafter again remained absent unauthorisedly till date. For the above conduct of her, Charge Sheet dated 26.07.2002 was issued to her along with list of documents and list of witness, she submitted her reply dated 19.08.2002; Enquiry Officer was appointed, the Enquiry Officer conducted enquiry in accordance with law and as per the procedure prescribed under CCS Rules. She participated in the enquiry without Defence Representative. In the enquiry proceedings of 28.11.2002 she admitted the charges in full. On the next enquiry sitting of 20.12.2002 also she admitted the charges of unauthorized absence. On that day she gave a representation in which she admitted the charge, but pleaded that due to her ill health she could not attend the duty regularly; on the last sitting of the enquiry dated 17.01.2003 she submitted certain documents in support of her representation; the enquiry is concluded in view of the admission of the charges. The Presenting Officer did not examine any witnesses, the Enquiry Officer submitted her Report on 11.08.2003 holding the 1st Party guilty of charges. Considering the gravity of charges, penalty of '*Removal from service which shall not be a disqualification for future employment in the Government*' was imposed. The Appellate Authority rejected her appeal; her habitual absence was seriously affecting the regular duties.

3. After completion of the pleading 1st Party amended her claim statement to the effect that enquiry initiated against her by invoking Rule 14 of CCS (CCA) Rules, 1965 is without jurisdiction; the memorandum dated 25.11.2003 was issued by the Director of the 2nd Party who is not the Disciplinary Authority in respect of her, as regard to the schedule of rule which became effective in pursuance of the resolution passed by the Board in its 79th Meeting held on 30.06.1990. As per item No. 7 of the meeting, Member Secretary of the Board is the Disciplinary Authority and the Chairman is the Appellate Authority in respect of the officials / officers upto the Rank of Assistant Secretary / Senior Research Officer. The 1st Party being the Lower Division Clerk, Member Secretary was Competent Authority to impose punishment and the chairman is the Appellate Authority, hence disciplinary proceedings initiated by the Director by issuing Memorandum dated 28.07.2002 is without jurisdiction. It is the Director who appointed the Enquiry Officer, issued show cause notice following the Report of Enquiry Officer and passed the punishment order. Hence, the action taken against her is not-est and inoperative.

4. The 2nd Party filed their additional counter statement to the amended claim statement to the effect that, as per the decision taken in the 93rd Board Meeting dated 07.09.1995 all the Directors of the Research Stations including the Director, CSR and TI, Mysore have delegated powers to function as the Disciplinary Authorities and to initiate the Disciplinary cases against the officials of the level of Senior Field Assistant / UDC / Bus

Driver / Field Assistant / LDC / Driver and all other posts carrying similar scales of pay from the level of Safaiwalas to Senior Field Assistants working under their control and to take appropriate action after completion of Disciplinary cases. It was communicated to all the Directors vide Central Silk Board No. CSB-63(13)/83-ES/VIG dated 15.11.1995 for implementation.

It was further contended for the 2nd Party that, 1st Party was working as Lower Division Clerk under the control of the Director, CSR and TI, Mysore; the disciplinary case was initiated against her on 28.07.2002 by the Director, CSR and TI, Mysore, in his capacity as a Disciplinary Authority. On completion of the case, major penalty of Removal from the Board's Service was imposed by the Director, CSR and TI, Mysore, who was well within his delegated powers both for initiating the Domestic Enquiry and imposing the punishment.

5. Since the workman is removed after holding the Domestic Enquiry into the charges, a Preliminary Issue was raised regarding validity of the Domestic Enquiry, after hearing both parties the issue is adjudicated affirmatively in favour of the 2nd Party endorsing the procedure of enquiry.

6. The 1st Party workman has given her evidence about her unemployment.

7. Both parties have adduced argument. That apart 1st Party has submitted the Written Argument also.

8. The Charge Sheet dated 26.07.2002 was served on the workman by the Director of the 2nd Party, the charge sheet included articles of charge, imputation of misconduct and the documents relied for the prosecution and the list of witnesses. The allegation was,while working as Lower Division Clerk at Regional Seri-cultural Research Station, Central Silk Board, Kodathi, Bangalore, she remained unauthorisedly absent from 17.04.2001 till date; she was late in attendance and frequently availed leave without permission. She failed to improve herself despite repeated instructions from the Competent Authority.

9. The workman appeared before the Enquiry Officer; her submission before the Enquiry Officer was ...*I am accepting the charges framed by the Disciplinary Authority with an appeal that I may be given one more opportunity to join for duty and I assure that I will be regular and sincere in attending to the office work. I will not absent myself from duty without prior permission. My prolonged absence from duty is mainly due to health and personal problems. In view of the above, I may be kindly be excused and permitted to join duty.*

However, the oral submission of the CSO was not corroborated with Medical Records, the enquiry was closed and the 2nd Party submitted their written brief which was marked to the 1st Party for her reply within 15 days. The 1st Party submitted her written brief wherein she pleaded that due to sudden death of her family member, she got the responsibility of maintaining a younger brother who is mentally retarded and is dependent on her. She had also projected her financial constraints and medical problems. She took exception that the Enquiry Authority did not seriously consider the explanation offered during the enquiry and sought for a chance to REPORT.

10. The Enquiry Officer in the above circumstances felt it not necessary to enquire into the articles of charge and the question of scrutiny of documents and summoning the witnesses for deposition would not arise. The enquiry was wound up at the preliminary stage itself, and Enquiry Officer proceeded to return his finding that '*the articles of charge framed in the case against the delinquent official stands proved in full*'.

The Director of the 2nd Party in the capacity of the Disciplinary Authority acting on the Enquiry Report imposed the Punishment Order vide annexure M-9 dated 25.11.2003. In the body of his order while agreeing with the enquiry findings, Disciplinary Authority referred to her past record and the unequivocal admission of charge by her, and recorded satisfaction about sufficient opportunity being given to both parties and concurred with the enquiry findings by holding that, her act of deserting official work by remaining absent continuously for indefinite period unauthorisedly, is a serious misconduct and thus she failed to maintain devotion to duty and she has acted in a manner which is quite unbecoming of a Government servant contravening Rule 31(1)(ii) and (iii) of Central Civil Services (Conduct) Rules, 1964. Thus major penalty of "Removal from service which shall not be a disqualification for future employment under the Government" as provided under Rule 11 (viii) of Central Civil Services (Classification Control & Appeal) Rules, 1965 was imposed.

11. The procedure adopted by the Enquiry Officer having been endorsed and the enquiry finding since based on the admission of the delinquent official and no mitigating circumstances shown either before the Enquiry Officer or Disciplinary Authority, this Tribunal has nothing to point out as illegal from the action taken by the 2nd Party.

12. Still the question remains about the jurisdiction of the Director of the 2nd Party in imposing the punishment of *"Removal from service which shall not be a disqualification for future employment under the Government" as provided under Rule 11 (viii) of Central Civil Services (Classification Control & Appeal) Rules, 1965.*

The judgment of the Hon'ble High Court of Karnataka in W.P 46579/2003 (S-RES) DD 05.01.2007, is relied for the 1st Party. The petitioner therein, one Sh. R Narayanaswamy was appointed as Field cum

Laboratory Assistant by the Director and then promoted as Senior Field Assistant at Silkworm Seed Production Centre of the Central Silk Board for whom the appointing Authority was the Central Silk Board / its Secretary. But he was removed from the order of the Director of the Central Silkworm Seed Project is relied. The Hon'ble High Court allowed the writ petition on the ground that "*an employee cannot be removed from the service by an order passed by an Authority who was subordinate in rank to the Officer who had passed the order of appointment in respect of the said officer*".

13. In the Writ Appeal in No. 240/2007 (S-RES) preferred by the Board, the Division Bench of the Hon'ble High Court of Karnataka interfered to the extent of giving liberty to the Board to redo the matter in accordance with law, however the order passed by the Writ Court was not set aside.

Special Leave Petition filed by the Board was dismissed with the observation that "*the application of Article 311 of the constitution to the employees of Central Silk Board is expressly kept open. So far as the respondent (individual employee) is concerned, we are not interfering with the impugned orders.*"

14. Sh. VSN for the 1st Party would contend that, as per the resolution of the Board in its 79th meeting, Member Secretary is the Competent Authority to impose the penalty. Referring to the judgment of the Apex Court in the matter of The General Manager, MSRTC Vs Devraj Urs and another, reported in 1976-II LLJ pg. 306, learned counsel submits that Disciplinary proceedings involving civil and evil consequences will have to be held by following the regulations as contained in the Standing Orders and any deviation will be fatal and the same cannot be cured. Learned counsel further draws the attention of the Court that the service of the 1st Party from 1991 onwards till 2000 was totally unblemished, it is only during 2001 and thereafter on account of unforeseen circumstances in her family and also because of her ill health, on certain occasions she was constrained to proceed on leave; she is not involved in misconduct involving moral turpitude; the penalty of dismissal from service in the given circumstance is shockingly disproportionate and needs to be set aside by invoking exclusive powers vested with this Tribunal by Sec 11-A of 'the Act'.

15. Sh. NSN for the 2nd Party in reply distinguishes the present case with that of Sh. R Narayanaswamy (supra), since at the time of his dismissal he was a Senior Field Assistant for whom the Appointing Authority under the Schedule was the Secretary and the power to impose punishment vested with the Secretary only. In such circumstances the punishment order passed by the Director was held as without Authority. Vide the decision of the board in its 93rd meeting dated 07.09.1995, all the Directors of Research Stations are delegated powers to function as Disciplinary Authority and to initiate Disciplinary cases against the officials of the level of Senior Field Assistant / UDC/ Bus Driver / LDC / Driver (learned counsel has produced the Photostat copy of schedule, Accordingly the Director is the Appointing Authority and Authority Competent to impose penalty from the cadre of Safaiwala to the Cadre of Senior Field Assistants. A copy of the delegation of power to the Member Secretary / Directors of the Board's Unit is also produced).

16. The orders passed by Hon'ble High Court of Karnataka in the matter of Sh. Narayanaswamy (supra) was not interfered by Apex Court. However, application of Article 311 of the Constitution was kept open to the employees of the 2nd Party and the said judgment was in reference to the said individual employee only and the relief granted to him was not disturbed. In that view of the matter the judgment of Sh. Narayanaswamy has no universal application.

17. It is obvious that the 1st Party was delving upon the resolution passed in 79th meeting of the Board, whereas the 2nd Party has placed on record the outcome of subsequent board meeting of 07.09.1995. The material produced by the 2nd Party convinces that the Director was well within his propriety to impose the punishment order.

18. The order impugned is not an outright dismissal from service. It is a removal from service under Rule 11(A) of CCS (CC&A) Rule 1965. She had not submitted the supporting documents in respect of her personal inconvenience before the Enquiry Officer while reasoning out her absence. She is already out of service for past 16 years, and there are no mitigating circumstances to interfere with the punishment order under question. Hence, I endorse the order passed by the 2nd Party in terminating the services of the 1st Party as legal and justified.

AWARD

The reference is rejected.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 14th May, 2020)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 1 जुलाई, 2020

का.आ. 503.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स समूह कमांडर, एनसीसी समूह मुख्यालय, मैंगलोर, बैंगलोर, और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बैंगलोर के पंचाट (संदर्भ संख्या 57/2001) को प्रकाशित करती है जो केन्द्रीय सरकार को 22.05.2020 को प्राप्त हुए थे।

[सं. एल-14012/06/2001-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 1st July, 2020

S.O. 503.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 57/2001) of the Central Government Industrial Tribunal cum Labour Court, Bangalore as shown in the Annexure, in the Industrial dispute between the employers in relation to The Group Commander, NCC Group Headquarters, Mangalore, Bangalore & Others, and their workmen which were received by the Central Government on 22.05.2020.

[No. L-14012/06/2001-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 14TH MAY, 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 57/2001

I Party

Sh. V. H. Dinesh,
S/o Sh. V. S. Helegowda, Major
Vagige, Via – Nelegahalli Post,
Sakleshpur Taluk, Distt. Hassan,
Hassan – 573201.

II Party

The Group Commander,
NCC Group Headquarters,
Goveas Complex, Valencia
Kankanady Post,
Mangalore – 575002.

Appearance

Advocate for I Party : Mr. S.B. Mukkannappa

Advocate for II Party : Mr. B.P. Puttasiddaiah

AWARD

The Central Government vide Order No. L-14012/6/2001-IR(DU) dated 11.07.2001 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether the action of the management of Group Commander, NCC Group Headquarters, Mangalore in terminating the services of Sh. V.H. Dinesh w.e.f. 31.01.2000 is legal and justified? If not, to what relief the workman is entitled?"

1. The 1st Party workman claims that, he was appointed as Helper by the 2nd Party Unit Run Canteen vide appointment Order dated 14.01.1996 in the pay scale of Rs. 600-40-920/-. His services were continued with small motivated breaks and finally terminated w.e.f 31.01.2000 without complying with the provisions of Sec 25-F of 'the Act'. He has worked against existing vacancy continuously up to 31.01.2000. He has not committed any misconduct and no enquiry was conducted before passing the order of termination; he is unemployed, and put to great financial hardship and mental agony.

2. The 2nd Party assails his claim on the ground that, the 2nd Party is the part of the Union of India and doing sovereign function; after his appointment vide order dated 04.01.1996, he had voluntarily left the service; however, on his request he was once again engaged on consolidated pay of Rs. 1,000/- per month; at the time of inception of the duty, he was informed that he cannot claim for regularisation; his service was not satisfactory; several warning letters were issued to him during the course of his employment; he has caused heavy damages to the 2nd Party; there is no provision in the 2nd Party to engage permanent employees; there is no such permanent post; since, his attitude was against the terms and conditions of the Management, he was disallowed by following the procedure by giving service benefits through Bank DD; he is not appointed in any capacity in the Department.

3. Both parties have adduced the evidence both oral and documentary.

4. It is from record that this Tribunal vide Order dated 14.03.2006 dismissed the reference on the ground that this Tribunal has no jurisdiction in the light of the (Judgement passed by Apex Court in Anadi Sadguru S.M.V.J.M.S Trust vs. Rudrani reported in 1989 SC 1607 followed by the Hon'ble High Court of Punjab and Haryana in an unreported Judgement WP No. 12654/93 in Sarasamma vs. Union of India). Aggrieved 1st Party workman challenged the Award before the Hon'ble High Court in WP No. 209/2007 (L-TER) DD 11.02.2011; the Writ Petition was allowed and the matter is remanded for fresh disposal. In body of the Order the Hon'ble High Court observed that '*.... the Labour Court has not framed any issue as to whether the Respondent is an Industry and the Petitioner is a workman. In the course of passing the Award, the Labour Court held that Respondent is not an Industry and Petitioner is not a workman. This finding of the Labour Court without framing an issue, without providing an opportunity to both the parties to adduce evidence and to address argument is bad in Law....*'

5. On after remand in the light of the observation made by the Hon'ble High Court this Tribunal framed following issue:

> *"1. Whether 1st Party workman proves that the 2nd Party is an Industry as defined under Section 2(j) of the Industrial Disputes Act, 1947?*
>
> *2. If so, whether he further proves that he is the workman as defined under Section 2(s) of ID Act, 1947?*
>
> *3. If so, whether the action of the management of Group Commander, NCC Group Headquarters, Mangalore in terminating the services of Sh. Dinesh w.e.f. 31.01.2000 is legal and justified?*
>
> *4. To what relief the parties are entitled to?"*

6. Both Parties have led additional evidence and marked documents Ex W-1 to Ex W-8 and Ex M-1 to Ex M-13. Both have submitted written argument.

7. The pivotal question is very maintainability of the reference made by the Central Government. Learned counsel for the 2nd Party Sh. BPP would contend that, the 2nd Party being an instrumentality of state, appropriate Forum for the workman to vent out his grievance is before the Central Administrative Tribunal. It is not an Industry as contemplated by Sec 2(j) of 'the Act' since, the Canteen is run for the benefit of their employees only and not for public. The Central Government has no administrative control and no finances are made available from the public fund to run the Canteen. However, the Judgement relied for the 2nd Party i.e., the Union of India and Others vs. M. Aslam and two others reported in 2001 (1) SCC 720 rules that employees of Unit Run Canteen of Army, Navy and Air Force are the Government servants but such status would not automatically entitle them to all the service benefits available to regular Government servants or counter parts in canteen stores department Canteens. Though the 2nd Party is a separate entity, however, has its link to Army, Navy and Air Force. As per Wikipedia the Free Encyclopaedia,

> *"The National Cadet Corps is the youth wing of Armed Forces with its Headquarters at New Delhi, Delhi, India. It is open to school and college students on voluntary basis. National Cadet Corps is a Tri-Services Organisation, comprising the Army, Navy and Air Wing, engaged in grooming the youth of the country into disciplined and patriotic citizens. The National Cadet Corps in India is a voluntary organisation which recruits cadets from high schools, higher secondary, colleges and universities all over India. The Cadets are given basic military training in small arms and parades. The officers and cadets have no liability for active military service once they complete their course."*

8. It has come in the evidence that the Canteen is not funded by the Government and they are not constituted under any statute or rules; they are constituted under Army Order only. The 1st Party knowing fully well that onus of proving the issue No. 1 and 2 (regarding the status of the 2nd Party as an Industry under Sec 2(j) and the 1st Party as a workman under Sec 2(s) of 'the Act') has not taken pain to address these issues. However, Sec 28 of the CAT Act saves the entertainment of the dispute raised by the 1st Party workman pertaining to his reinstatement. The Apex Court in the above referred case of Sh. M. Aslam did not dispute the jurisdiction of the CAT pertaining to the employees serving in the Unit Run Canteen, still did not endorse the view taken by the CAT that their service conditions are governed by the fundamental rules applicable to regular government servants or their counterparts in canteen stores.

The 2nd Party Canteen since engaged in the systematic activity of sale of goods and commodities though not to the public, definitely is an industry and since the activity is carried on under the surveillance of the NCC group, Headquarters at Mangalore, the Central Government is the appropriate Government to refer the dispute to this Tribunal for adjudication. Thus, by necessary implication the 2nd Party is an Industry under Sec 2(j) of 'the Act' and the 1st Party since was employed vide order dated 30.07.1997 as Helper No. 3 (Ex M-6) till his removal dated 31.01.2000 vide Ex M-12 is a workman under Sec 2(s) of 'the Act', that takes us to the next question about the legality or otherwise of his removal.

9. Initially, he was appointed as Helper vide Appointment Order dated 04.01.1996 in the scale of 600-40-920 (Ex M-1); he was terminated vide order dated 06.06.1997 w.e.f 07.07.1997 he was given *liberty to seek employment elsewhere within this period. If willing for appointment in the said unit run canteen, he was to submit an application within 7 days with full particulars of his previous experience in the unit run canteen.* Accordingly, he submitted his application on 01.07.1997 and the Board of Officers interviewed and selected him as Helper no. 3 vide proceedings dated 30.07.1997 (Ex M-6), in the fixed pay scale of 1000/- per month + 5% yearly increment on the terms and conditions enshrined in the Annexure Ex M-4 appended to the Appointment Order. Para No. 2 of the Ex M-5 read as follows

> *"The services of an employee can be terminated at any time giving notice of one month and the employee is also at liberty to leave by giving one month notice. A Board of Officers will be convened for termination of an employee of the canteen."*

Further the existing contributory Provident Fund System was continued at Para 13 of Ex M-5. Accordingly, he was given Appointment Order for the post of Helper No. 3 vide Order (Ex M-6) dated 30.07.1997, on the terms and conditions of appointment applicable. Subsequently, though the warning notice was issued to him at no point of time, his explanation was called for pertaining to any of the allegation. On 31.01.2000, the Board held proceedings vide Ex M-11 on the basis of the warning letters issued to him. The Board recommended that, *the services of Sh. Dinesh V H Helper No. 3 be terminated forthwith.* The Termination Order is further recommended by OIC Canteen and at the direction of the Group Commander. He is issued notice of termination dated 30.01.2000 that is service as Helper No. 3 in NCC Group, Headquarters Canteen, Mangalore is terminated w.e.f 01.02.2000 in terms of Para 2 of terms and conditions of employment dated 31.07.1997. He was informed that, he will be paid one month salary on termination so also the Provident Fund with interest. The photostat copy of the counter challan for depositing Rs. 4,860/- of Provident Fund together with interest accrued therein is marked as Ex M-13. During his cross-examination the 1st Party workman admits that, he rejected one month salary which was offered by the 2nd Party along with Termination Order.

10. In view of the Judgement of the Apex Court in Sh. M. Aslam and others (Supra) unless the employer / the 2nd Party frames separate conditions of service to the employees of the Unit Run Canteens or adopts the fundamental rules, this Tribunal cannot go beyond the terms and conditions under which the 1st Party is appointed. He is given one month notice along with notice pay. If the 1st Party did not accept the notice pay, the 2nd Party cannot be blamed for that. He has received the amount accumulated along with its interest which was collected by the 2nd Party under the voluntary Provident Fund Scheme. His termination Order is not stigmatic though several warning letters were issued to him. The Termination Order since is in accordance with the terms and conditions of his appointment, I find no illegality in the Order. The Authorities of the Higher Courts relied by him have no semblance to the present facts and circumstance. Hence,

AWARD

The reference is rejected.

(Dictated to o/s LDC, transcribed by her, corrected and signed by me on 14th May, 2020)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 1 जुलाई, 2020

का.आ. 504.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स सहायक महाप्रबंधक (प्रवेश), भारत संचार निगम लिमिटेड,बेलगाम, बैंगलोर, और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बैंगलोर के पंचाट (संदर्भ संख्या 19/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 19.05.2020 को प्राप्त हुए थे।

[सं. एल-40012/1/2007-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 1st July, 2020

S.O. 504.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 19/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the Industrial dispute between the employers in relation to The Assistant General Manager (Admn.), Bharat Sanchar Nigam Limited, Belgaum Bangalore & Others, and their workmen which were received by the Central Government on 19.05.2020.

[No. L-40012/1/2007-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 06TH MAY, 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 19/2013

I Party	**II Party**
1. Sh. S. S. Shintri, Chikkulligeri Village and Post, Saunadatti Taluk, Belgaum - 590 010.	The Assistant General Manager (Admn.), O/o General Manager Telecom District, Bharat Sanchar Nigam Limited, Belgaum - 590 001.
2. Sh. V. G. Rayanagoudar, Chikkulligeri Village and Post, Saundatti Taluk, Belgaum - 590 010.	

Appearance

Advocate for I Party : Mr. K. Hanumantharayappa

Advocate for II Party : Mr. Y. Hariprasad

AWARD

The Central Government vide Order No. L-40012/1/2007-IR(DU) dated 26.04.2013 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether the action of the management of Bharat Sanchar Nigam Ltd. in terminating the services of Sh. S.S. Shintri and Sh. V. G. Rayanagoudar w.e.f. 20.05.2006 is legal and justified? What relief the workmen are entitled to?"

1. The claim is made by two individuals on the following ground :

They are the casual Mazdoor on daily wage basis since 15.09.1986 and 11.03.1986 respectively; they have served continuously until 20.05.2006 and were terminated arbitrarily; this termination was the subject matter before this Tribunal in Reference No. 105/1997 and 106/1997; vide Award dated 21.06.1999 this Tribunal ordered their reinstatement with 50% back wages. The 2nd Party challenged the Award in W.P 30042-

46 and 40048-52/99 the award was modified to some extent. 2nd Party carried the matter in W.A No. 7571, 7513, 800 and 8012/99; the appeal was allowed vide order dated 09.02.2000. The workman filed SLP before the Hon'ble Supreme Court in SLP 1239-1244/2011; the Hon'ble Supreme Court directed the 2nd Party to consider as to whether 'the workmen could be accommodated in some other project or scheme or regular employment', by issuing suitable instructions. It was further ordered that if none of these options was not possible, they shall be at liberty to terminate the workmen after reinstating them as directed by the High Court and then by complying with Sec 25-F of 'the Act'. But the 2nd Party without reinstating them has terminated them from service. The 1st Party sought for conciliation but the request was rejected by the Central Government vide order dated 08.05.2007, this was questioned before the Writ Court, the Hon'ble High Court of Karnataka directed the 2nd Party to reconsider the matter in the light of the directions issued by the Hon'ble Supreme Court dated 07.01.2013. The 2nd Party has not given any notice or opportunity before they were abruptly terminated from service; the alleged reasons assigned by the 2nd Party for retrenching the services of the workmen are totally false and untenable. The 1st Party workmen are unemployed hence the prayer to advise and direct the 2nd Party to reinstate them with consequential benefits.

2. The claim is contested by the 2nd Party, among other things it is stated that the 1st Party were the Project Workers working on a particular assignment / project; on completion of the assignment / project they were terminated. As per the directions of the Hon'ble Supreme Court they were reinstated; their service were no longer required hence, retrenched from service w.e.f. 20.05.2006 this is in accordance with the orders of the Hon'ble Supreme Court, all are fully complied. They were paid wages in lieu of notice for a period of 1 month; retrenchment compensation for 15 days for every completed year of service from the date of initial engagement till the date of termination is paid; the termination of the 1st Party is duly informed to the Competent Authority / Assistant Labour Commissioner (C), Hubli. Wages upto the date of termination is paid which is duly acknowledged by them; there were no suitable sanctioned post to accommodate the 1st Party and no Project work was available to engage them. Hence, re-employment was not considered. Termination order dated 20.05.2006 issued is upheld by the Hon'ble High Court of Karnataka vide order dated 31.07.2006. The order of termination is issued by the Competent Authority, and not illegal as alleged.

3. The burden of justifying the action taken against the 1st Party workmen was on the 2nd Party; accordingly they examined the AGM (Planning), Telecom Department, BSNL, Belgaum. In his affidavit evidence among other things he has stated that the 1st Party workmen in their claim have not disclosed that one Sh. Shankar A Malagi had filed a Contempt Petition before the Hon'ble High Court of Karnataka in CCC No. 333/2006 (Civil) stating that the Department committed contempt of the common order passed by the Hon'ble High Court of Karnataka in which 1st Party was also one of the petitioner. The Division Bench observed that there is no deliberate disobedience of the order.

He has produced the copies of the two Office Orders dated 20.05.2006 whereby the 1st Party workmen/ casual labourers were retrenched from service, as per this document each of them have received wages in lieu of notice for a period of one month at Rs. 4,246/-; retrenchment compensation for the period 15.09.1986 to 20.05.2006 amounting to Rs. 42,456/- has been received. Wages for the period 01.05.2006 to 20.05.2006 amounting to Rs. 2,830/- has been paid and received. These facts are not at all disputed by the 1st Party workmen.

The tone of cross examination is that, no document is produced by the 2nd Party in respect of the deliberation made at the end of the 2nd Party to accommodate the 1st Party and they have not explored the possibility to engage the 1st Party in any other work.

4. 1st Party after cross-examination of MW-1 did not turn up to adduce rebuttal evidence. Though they have received the notice, they did not turn up to prosecute their dispute. At this stage it is not required to detail the nature of the service rendered by them, period of service, and the implication of the order passed by the Hon'ble Supreme Court. It is also not warranted to call the 2nd Party to place on record the details of the effort made by them to relocate the workmen in any of the Project or Regular Employment, they have availed the liberty granted by the Apex Court to terminate the Appellants after reinstating them and then complying with Sec 25-F of 'the Act'. Having received the retrenchment compensation in respect of the service rendered in a project work for the 2nd Party the 1st Party workmen are no more the employees of the 2nd Party and do not fall within the frame of 'workman' contemplated by Sec 2(s) of 'the Act', no illegality is committed by the 2nd Party in their action.

AWARD

The reference is rejected.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 06th May, 2020)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 1 जुलाई, 2020

का.आ. 505.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स सहायक महाप्रबंधक (एस एंड ए), मंगलौर, बैंगलोर, और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बैंगलोर के पंचाट (संदर्भ संख्या 48/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 19.05.2020 को प्राप्त हुए थे।

[सं. एल-40011/23/2005-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 1st July, 2020

S.O. 505.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 48/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the Industrial dispute between the employers in relation to The Assistant General Manager (S&A), Mangalore, Bangalore & Others, and their workmen which were received by the Central Government on 19.05.2020.

[No. L-40011/23/2005-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 05TH MAY, 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 48 2012

I Party	**II Party**
Sh. P. Bhaskar, S/o Sh. Shivappa Poojary, Nathalia Sequeria Compound, Kadri Kaibattal, Kankandy Post, Mangalore – 575002.	The Assistant General Manager (S&A), O/o The Principal General Manager Telecom, D.K. District, Mangalore – 575001.

Appearance

Advocate for I Party : Mr. J. Ravindra Naik

Advocate for II Party : Mr. Y. Hariprasad

AWARD

The Central Government vide Order No. L-40011/23/2005-IR(DU) dated 12.11.2012 / 21.11.2012 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

> **"Whether the action of the Sub-Divisional Engineer Telegraph, Bharat Sanchar Nigam Limited, Bantwal, in compulsorily retiring Sh. P. Bhaskar from service w.e.f. 01.11.2001, as punishment vide Order No. Q-9/1130 dated 10.01.2002 is legal and justified? If not, what relief workman is entitled to?"**

1. The 1st Party workman herein is challenging the action of the 2nd Party in compulsorily retiring him from service as a measure of punishment. The punishment was imposed on him after the charges alleged against him came to be proved in a Departmental Enquiry. The workman has served the 2nd Party as a Driver; he assails the Punishment Order on the ground that, no sufficient opportunity was provided to him during Domestic

Enquiry and there was no material against him to hold the charges proved etc. He also questions the legality of the impugned order.

2. The 2nd Party refuted his allegation and justified the punishment of compulsory retirement imposed on him.

3. On rival pleadings, Preliminary Issue regarding fairness of Domestic Enquiry was raised and both Parties adduced evidence.

4. When the matter was at the stage of argument on Domestic Enquiry, the 1st Party workman submitted in the open Court Hall that he is not challenging the fairness of Domestic Enquiry. His counsel was also present when he made the above submission.

In that view of the matter the Preliminary Issue is answered in the affirmative by upholding the fairness of the Domestic Enquiry.

5. The 1st Party workman adduced evidence to the effect that, he is not in a position to work anymore, because of his ailment. He is not anticipating reinstatement; since, he has raised the Dispute, the 2nd Party has withheld his terminal benefits though they dispensed with his service by way of compulsory retirement and he seeks for a direction to the 2nd Party to release his terminal benefits in respect of 14 years of service rendered by him.

In that view of the matter, there is no ensuing Industrial Dispute between the Parties. However, the 2nd Party is said to have with held his terminal benefits, pension benefits only for the reason that he raised the present Dispute. If that is so, it is a matter of concern.

6. My finding to the referred issue is, the action taken by the 2nd Party against the 1st Party workman Sh. P. Bhaskar in compulsorily retiring him service w.e.f. 01.11.2001 as punishment vide order No. Q-9/1130 dated 10.01.2002 is legal and justified. However, if they have withheld his benefits arising out of his retirement, same shall be released in his favour forthwith.

AWARD

The reference accepted in part.

The 2nd Party is directed to release the benefits for which the 1st Party workman is legally entitled consequent upon his compulsory retirement from service.

(Dictated to o/s LDC, transcribed by her, corrected and signed by me on 05th May 2020)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 1 जुलाई, 2020

का.आ. 506.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स निर्देशक, केंद्रीय तंबाकू अनुसंधान संस्थान, अनुसंधान स्टेशन, मैसूर, बैंगलोर, और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बैंगलोर के पंचाट (संदर्भ संख्या 12/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 19.05.2020 को प्राप्त हुए थे।

[सं. एल-42012/153/2011-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 1st July, 2020

S.O. 506.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 12/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the Industrial dispute between the employers in relation to The Director, Central Tobacco Research Institute, Research Station, Mysore, Bangalore & Others, and their workmen which were received by the Central Government on 19.05.2020.

[No. L-42012/153/2011-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 28TH APRIL, 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 12/2012

I Party

The General Secretary,
CTRI Karmikara Sangha,
Apporu Building, Hattimarada Street
Kalkunike, HunsurTaluk,
Mysore 571105.

II Party

The Director,
Central Tobacco Research Institute,
Research Station,
Hunsur,
Mysore - 571105.

Appearance

Advocate for I Party : Mr. T. S. Anantharam

Advocate for II Party : Mr. S.V. Shastri

AWARD

The Central Government vide Order No. L-42012/153/2011-IR(DU) dated 22.03.2012 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether the charter of demands raised by the CTRI Karmikara Sangha (CITU) against the management of Central Tobacco Research Institute, Hunsur, Karnataka vide their letter dated 11.05.2010 are legal and justified? What relief the Sangha is entitled to?"

1. The demand of the 1st Party Union with the 2nd Party Management in respect of the casual labourers is to the effect, that the casual labourers who are the members of the Union are doing the work of perennial nature. The 2nd Party has to pay workmen a justifiable subsistence allowance during the non-engagement period.

Similar wages and facilities on par with the regular employees / permanent workman unskilled.

To negotiate with the 1st Party Union in good faith.

Safe work environment, medical facilities when they are engaged for work.

To provide personal safety equipments like mask and protective work gloves while they are working with hazardous chemicals.

The Management has to provide weekly holidays, leave and over time allowances etc. They have to be engaged for more than 200 days in a year with annual bonus under Bonus Act.

2. The 2nd Party countered the claim that, the 1st Party is not a recognizedUnion of the 2nd Party. Central Government is not an appropriate Government under Sec 2 of the I D Act to refer the matter and the reference is bad. The Certificate of registration of Union and the list of its members is not produced; the casual workers are not the member of the Union; the nature of work performed by the casual workers is seasonal in nature; there is no continuous work in 2nd Party; hence, question of absorbing the service of casual workers is beyond the scope of work carried by them; casuals are engaged during tobacco nursing and crop period i.e., from April to October as tobacco crop is grown during rainy season only i.e., June to September; after tobacco crop is completed the 2nd Party does not grow any other crop; the seasonal work comes under minimum wages category hence, wages are paid as per the order of the Regional Labour Commissioner (Central) vide his memorandum dated 01.04.2010.

It is further stated that, previously 33 casual employees employed in CRTI, Hunsur, filed a Writ Petition in W.P No. 10301-10334/1990 before the Hon'ble High Court of Karnataka, praying for regularization of their service with back wages. The Writ Petition came to be dismissed by observing that, it would be inappropriate to ask the Institute to maintain labour force without utilizing the services; since, the 2nd Party is engaged in growing seasonal crop, which is confined only for seven months remaining period will be idle; there is no justification in the demand for subsistence allowance; there is no post called permanent workman

unskilled in the Institute; they have permanent Group D category and temporary status casual workers category; the seasonal workers come under minimum wages category; the Institute works under ICAR which comes under the Ministry of Agriculture, Government of India and all the rules apply to them; personal safety measure like mouth guard, hand glouse are provided to such workers wherever necessary; the seasonal casual work is provided during tobacco crop season only; there is no justification in their demand; the casual workers are not entitled for any bonus, medical leave etc.

3. On behalf of the 1st Party, the General Secretary of the Union filed her affidavit evidence and was cross-examined in part. But on the subsequent date, the 1st Party did not show up to prosecute the claim by tendering herself for further cross-examination. Under the circumstance the affidavit filed by her and Ex W-1 to Ex W-4 marked during her examination in chief evidence cannot be counted upon.

The 2nd Party also have not turned up to substantiate their counter statement averments by adducing evidence. In the given circumstance the inevitable conclusion is, the charter of demand raised by 1st Party Union is not legal and not justified and no relief can be awarded in the present reference.

AWARD

The reference is rejected.

(Dictated to o/s LDC, transcribed by her, corrected and signed by me on 28th April, 2020)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 1 जुलाई, 2020

का.आ. 507.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स सीनियर डिप्टी डायरेक्टर जनरल, जियोलॉजिकल सर्वे ऑफ इंडिया, बैंगलोर, और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बैंगलोर के पंचाट (संदर्भ संख्या 141/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 19.05.2020 को प्राप्त हुए थे।

[सं. एल-42011/57/2006-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 1st July, 2020

S.O. 507.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 141/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the Industrial dispute between the employers in relation to The Senior Deputy Director General, Geological Survey of India, Bangalore, Bangalore & Others, and their workmen which were received by the Central Government on 19.05.2020.

[No. L-42011/57/2006-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 05TH MAY, 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 141/2007

I Party

The Chairman,
Geological Survey of India
Employees Association,
Vasudha Bhawan,
Kumaraswamy Layout,
Bangalore – 560078.

II Party

The Senior Deputy Director General,
A.M.S.E Wing,
Geological Survey of India,
Vasudha Bhawan,
Kumaraswamy Layout,
Bangalore – 560078.

Appearance

Advocate for I Party : Mr. D.R. Vishwanatha Bhat / Ms. Mythili Krishnan

Advocate for II Party : Mr. Sathish. B

AWARD

The Central Government vide Order No. L-42011/57/2006-IR(DU) dated 10.09.2007 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether the demand of the Geological Survey of India Employee's Association for seeking regularization of services of 10 workmen, as per Annexure, is legal and justified? If so, to what relief the workmen are entitled to and from which date?"

1. Claim is made on the ground that, the concerned workmen are employed as sweepers / cleaners to serve in the Regional Office of the 2nd Party Management. Apart from the work of sweeping and cleaning, they are also doing the work of Group D employees of 2nd Party. They are working directly under the control of the 2nd Party Management. However, in June 1997 it was shown that they worked under a Contractor by name Sh. Papanna. Said Papanna was stopped by the 2nd Party from April 1998; since then they are working under the 2nd Party Management and are paid wages directly by the 2nd Party; the work performed by them is permanent and perennial in nature. Every day they clean the premises measuring carpet area of 1.5 lakh square feet and are paid daily wages at the rate of Rs. 53/- per day and their monthly wages comes around Rs. 1,590/- to each workman. The wages paid to them is recorded as "*contingent wages of the labourers for the maintenance of Vasudha Bhavan*". They are working continuously for a long time but they are not paid equal wages for the equal work performed by permanent employees. They filed an application before the Central Administrative Tribunal Bangalore seeking regularisation of their service, however, withdrew to raise the present Industrial Dispute.

2. The 2nd Party contested the claim on the ground that, they are not the employees of the 2nd Party; the person who signed the petition has no authority; the 2nd Party are unnecessary parties to the case; Deputy Director General and H.O.D, RSAS, GSI, Bangalore and the Director and H.O.O, SRO, GSI, Hyderabad are the proper parties; the claim allegations are all false. For maintenance of the Office premises, the 2nd Party issued Tender notification for housekeeping work on part time basis; the tender of M/s. Naveen Enterprises was accepted and the work was entrusted to him; the contractor was paid wages, in turn he disbursed the wages to the workmen; the 2nd Party never appointed 1st Party workmen nor did make any payment to them; on expiry of the contract, the 2nd Party decided to call fresh Tender.

In the said circumstance, the Contractor setup the 1st Party workmen to file application for regularisation service before CAT; the applications were disposed of by CAT on 11.07.2005 with liberty to the Applicants to approach the competent Court. Subsequently, said Order was modified with a direction to the Management to give preference and engage the Applicants if there is a need, justification and requirement through the Contractor and pay them in terms of the agreement so arrived between the Contractor and the Respondents. The workmen were not engaged on daily wage basis by the 2nd Party. After filing of the case at CAT, they are not attending the work properly. Their service is not terminated since they are not engaged by the 2nd Party; there is complete ban on appointment of casual workers or daily wagers for full time work. The 2nd Party does not come under ID Act in view of the Judgement passed by the Hon'ble High Court of Andhra Pradesh in WP No. 323/1977. The housekeeping work takes two to three hours per day which is carried out by the contractor purely on part time basis and the same does not come under the purview of permanent work.

The Proprietor of M/s. Naveen Enterprises in his Statement given on 15.06.2005 before the Vigilance Officer, CHQ, Geological Survey of India has categorically admitted that, he is doing the work of housekeeping without any break and the workmen are engaged by him purely on part time basis; they are duly paid depending on their service and the work. The House keeping work at the 2nd Party Management Office was given to M/s. Naveen Enterprises purely on contract basis vide office letter No. D-11011/1/HK/GENL/1997/AMSE/3985 dated 14.08.1997 with the terms and conditions mentioned therein and the work is being carried on by the same contractor since then till date. The payment at the same rate of Rs. 23,850/- per month is continued to be made in lumpsum either to the Contractor or his Representatives and enhancement could not be considered until the re-tender was called and finalised.

During October 2004, effort was made to float Tenders and the Tenders were published in the Newspaper during Jan 2005 same was finalised; but further action was kept in abeyance in view of the Orders

passed by Hon'ble CAT Bench in OA 46, 53 to 69 and 80/2005; the workmen are engaged / disengaged by the Contractor himself from time to time; contractual payment is made to the workmen as per the terms and conditions of the contractor; the workers engaged on part time contract basis are not entitled for temporary status and cannot be considered for regularisation; they are not recruited initially through Employment Exchange; without fulfilling the terms and conditions of relevant Recruitment Rules such workers cannot be regularised; there are no sufficient vacant post to regularise the workers.

3. Both parties have adduced evidence and submitted their argument.

4. It is the history fathomed from the records that, in the year 2005, 19 workmen approached the Central Administrative Tribunal, perhaps seeking regularisation of their service. In the meantime, the 2nd Party invited Tenders for housekeeping and due date for opening tender was fixed on 10.03.2005. At the instance of the 1st Party workmen, an ex-parte order was passed by CAT directing the Respondent (2nd Party herein) "*to continue to engage the Applicants on need basis even if a new Contractor is awarded the tender to do the job of housekeeping*". However, the Applications were withdrawn by Applicants with liberty to raise appropriate Industrial Dispute.

On the undertaking given by the Learned Counsel on the record for the Department, the Respondent was directed "*to continue to give preference and engage them (Applicants therein) through the contractor and pay them in terms of the agreement so arrived at, between the contractor and Respondents*" (vide Ex M-103 proceedings in OA No. 46,53-69 and 80/2005 dated 11.07.2005). Vide proceedings of 12.08.2005, above Order was modified as under

> *"2. Keeping the above view, the Respondents are directed to continue to give preference and engage the Applicants if there is a need, justification and requirement, through the contractor and pay them in terms of agreement so arrived between the Contractor and Respondents. The Applicants could also take steps to institute / raise appropriate Industrial Dispute before the Competent Court / Tribunal on or before 12th September 2005."*

Despite the above Order in their hand, the 1st Party did not raise Dispute against the concerned Contractor.

5. Though, deed of contract that was entered with M/s. Naveen agencies is not produced in evidence, the 2nd Party has produced the internal communications with the contractor, letter from the chairman of Tender Committee, Tender Committee Report for housekeeping, bills numbering 81 and the extracts of the 12 cheques issued to the Contractor. These are the Official transaction that transpired during the normal course of administration of the 2nd Party and their veracity cannot be brushed aside easily. In one of the documents Ex M-2 dated 14.08.1997, the Contractor among other things was informed by the Administrative Officer for Deputy Director General that *'housekeeping work should be carried out twice in a day that is before 9:30 am and after 3:30 pm'*. In the Tender notification dated 16.04.2010 issued in respect of housekeeping work, one of the conditions of the work was mentioned thus,

> *"2. The above job must be conducted twice a day morning and evening i.e., 8:30 am to 10:00 am and 3:30 pm to 5:00 pm".*

6. Nobody would dispute that housekeeping is a permanent work and also is perennial in nature as long as the Principal Employer conducts his business and administration in the said building. But the said work is not incidental to the main business / administration happening in the premises. It is too much to say that, housekeeping works takes away the entire office hours that is eight hours a day. 'The Act' nowhere contemplates that, part time employees are not the workmen within the definition clause of Sec 2(s) of 'the Act'. But said blank left by Sec 2(s) cannot be interpreted that the part time employee who works for an Institute continuously would acquire right to seek regularisation of service automatically. A part time employee who is not bound to dedicate eight hours work a day does not stand on the same pedestrian on which a full-time casual employee would stand. The documents regarding the effectuation of contract of housekeeping with M/s. Naveen Agency cannot be doubted. Though it is contended that, he was introduced in the middle during 1997 for the first time, there is not even a filament of documentary evidence which would contradict the veracity of Exhibits M-7, Ex M-100 (bills raised and cheques issued to the contractor).

7. The 1st Party has produced Ex W-1 / the certified copy of the documents which they have produced in the complaint filed by the 1st Party workers against the 2nd Party which registered in Complaint No. 01/2011; said complaint is pending for adjudication; These are the Photostat copies of the sanction Orders of even dates in respect of payment of wages to the contingent labours. Ex W-1 also includes acquittance role under which the 1st Party workmen have received their wages under acknowledgment but the period for which such payment is received cannot be fathomed from this document.

In my considered opinion, Ex W-1 series do not contradict the documents Ex M-7 to Ex M-100. For example, under Ex W-1 a sanction is given for sum of Rs. 28,850/- towards contingent labour wages. As per the Management documents the bills raised by the contractor is up to 31.08.1998 and it again starts from 26.05.2003. For in between period, the evidence is vacuum. Accepting the documents Ex W-1 as genuine, then also, it has to be understood that, the bills were by the Contractor and were paid to him after 26.05.2003.

There is no gain say to the fact that, the 2nd Party being an instrument of the Government of India, is governed by the Central Service Rules and the Recruitment Rules laid down by the Central Government. Since the year 1998 there was complete ban on recruitment of contract labours or daily wagers for full time work in the Government of India Departments.

8. 2nd Party contended that they are not an industry within the contemplation of Sec 2(j) of 'the Act'. During the cross examination of MW-1, it was brought out that they are engaged in Mineral survey, exploration of minerals auctioning the minerals blasts by calling E-Tenders. That is sufficient to hold that, they are engaged in *"supply / distribution of goods or services with a view to satisfy human wants or wishes"* that brings the Department to the fold of definition clause of **Industry** contemplated by Sec 2(j) of 'the Act'. Hence, there is no merit in the contention of the 2nd Party that the Dispute raised is not an Industrial Dispute.

9. It is also an admitted fact within the Parties that, the 1st Party workmen have not worked subsequent to 2011. The Order passed by the CAT at Ex M-104 though directs the 2nd Party to give preference and engage the 1st Party is further clarified by the word *"if there is a need, justification and requirement"*, does not add any merit to the demand of the 1st Party workman. At the same time it is interesting to know from Ex M-104 that, a representation was made on behalf of the 1st Party before the Bench of CAT that, contractor though seems to have received payment from Respondent, Applicants are been paid wages from December 2004 onwards. Does not it indicate that, the workmen as on that date were well aware that they are the employees of the Contractor and till then have received wages from him?

10. The 1st Party are relied on the following judgements,

(i) Bareilly Electricity Supply Co. Ltd. vs. The Workmen and Ors (AIR 1972 SC 330) (Para 21)

(ii) Agricultural Produce Market Committee vs. Ashok Harikuni and Ors. (AIR 2000 SC 3116) (Para 33)

(iii) Bhilwara Dugh Utpadak Sahakari S. Ltd. vs. Vinod Kumar Sharma Dead by L.Rs. and Ors. (AIR 2011 SC 3546) (Para 4,5)

(iv) Management of National Aerospace Laboratories vs. Engineering & General Workers Union (ILR 2015 Karnataka 349) (Para 26-29)

(v) The Zonal Manager, Bank of India vs. M.H. Shankarappa (ILR 2018 Karnataka 318) (Para 7-10)

(vi) Maharashtra State Road Transport Corporation and Ors. vs. Casteribe Rajya p. Karmachari Sanghatana [(2009)8 SCC 556] (Para 36)

(vii) Durgapur Casual Workers Union vs. Food Corporation of India [(2015) 5 SCC 786] (Para 13)

(viii) Jaipur Zilla Sahakari Bhoomi Vikas Bank Ltd vs Ram Gopal Sharma and Ors (2002-I-LLJ-834) (Para 13, 14)

(ix) Bhavnagar Municipality vs. Alibhai Karimbhai and Ors. (AIR 1977 SC 1229) (Para 13,14)

But none of these judgements are in reference to the entitlement of the part time employee for permanent posts dehors the recruitment Rules governing the Establishment. It cannot be lost sight of that a part time employee is not governed by the service conditions applicable to the permanent employees. He has every opportunity to enhance his income by utilising his spare time which other Employers or engaging himself / herself in any other job or business.

Wherefore, I find no merit in the demand of the 1st Party Union seeking regularisation of service of 10 workmen.

AWARD

The reference is rejected.

(Dictated to o/s LDC, transcribed by her, corrected and signed by me on 05th May, 2020)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 1 जुलाई, 2020

का.आ. 508.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महाप्रबंधक (एचआर), भारत इलेक्ट्रॉनिक्स लिमिटेड, बैंगलोर, बैंगलोर, और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बैंगलोर के पंचाट (संदर्भ संख्या 27/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 05.03.2020 को प्राप्त हुए थे।

[सं. एल-14011/06/2014-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 1st July, 2020

S.O. 508.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 27/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager (HR), Bharat Electronics Ltd., Bangalore, Bangalore, & Others, and their workmen which were received by the Central Government on 05.03.2020.

[No. L-14011/06/2014-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 27TH FEBRUARY 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 27/2014

I Party	**II Party**
The General Secretary, Bharat Electronics Workers Unity Forum , C/o BEL, Jalahalli Post, Bangalore - 560 013.	The General Manager (HR), Bharat Electronics Ltd, Jalahalli Post, Bangalore - 560 013.

Appearance

Advocate for I Party : Mr. A. J. Srinivasan

Advocate for II Party : Mr. S. Santosh Narayan

AWARD

The Central Government vide Order No. L-14011/06/2014-IR(DU) dated 18.07.2014 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

> **"Whether the demand made by the Bharat Electronics workers unity forum to amend/Change Clauses 7,9.5,6.2.1 in the sports scheme vide office order no. HO/828/002 dated 09.02.2011 of the management of Bharat Electronics limited, Bangalore issued for benefit of sportspersons employed in bharat electronics limited is justified? If not what relief they are entitled to?"**

1. Office order cited in the Schedule to the order of reference is No. HO/828/002 dated 09.02.2011. The 2nd Party has produced the Scheme as Ex M-1 dated 09.12.2011, perhaps due to typographical mistake the date is wrongly mentioned in the Schedule.

2. The 1st Party Trade Union has espoused the cause of the Workman Sh. G. Venkataravanappa, who is a physically challenged sports person claiming that the 2nd Party shall frame a policy in line of official memorandum dated 16.07.1985 issued by The Government of India Ministry of Industry, Bureau of Public Sector Enterprises formulating a scheme to encourage and felicitate outstanding sports persons in the Government Service who won Medals in National and International Sporting Events and to accord promotion to him.

It is claimed that all the Public Sectors like HAL, Railways and Nationalised Banks have formulated and circulated Schemes in line with the Office Memorandum dated 16.07.1985, for recognition of their outstanding employees who participated and won in National and International Events; whereas the 2nd Party failed to come up to any formal Scheme. Sh. G. Venkataravanappa, Staff No. 207432 has received highest Awards in Sports, Arjuna Award from the Central Government and Ekalavya Award from the State Government, Rajoytsava Award, several National and International Medals in Athletics for Paraplegic, Weightlifting, Short-put, Javeline and Discus Throw. He suffers from congenital deformity of disability in both legs, beneath the hips. He joined the service as a Draughtman on 01.01.1988 in Grade 3 (Non-Executive Cadre) with ITI qualification. He has participated in the sports event with the permission of the 2nd Party and has won Gold Medal in Weight lifting, Silver Medal in Short put, Discus throw and Javeline in the year 1994, in the World Master Games held in Brisbane. Likewise, he has represented the Country in many International Sports meets and won Medals. Only once the Management sponsored his sports travel for World Master Games in 1995. Thereafter he was paid Rs. 28,000/- towards bare cost of Airfare in the year 2002, to attend World Champion Athletics held in France. He had to spend heavily for his Training and Travel, accommodation and other incidental expenses to participate in the National and International Meets. He was not given his due promotions and increment as is given in other Public Sector Enterprises as per their Schemes. The 1st Party Union approached the State Commission under The Person with Disability (Equal Opportunities Protection of Rights and Full Participation) Act 1995, the Commissioner made representation to 2nd Party vide letter dated 17.01.2007. The 2nd Party declined to give him promotion on the ground that same cannot be done without vacancies. The Commission vide Order dated 04.05.2009 passed order stating that 2nd Party should formulate a policy in this regard and Sh. G. Venkataravanappa should be accorded promotions at the earliest. In the normal course the Workman was entitled for promotion as Draughtsman-A; said Promotion was given to Draughtsman-A, Group-IV, w.e.f. 01.09.2001, but it is not a promotion given under any Awards. Special Increments are to be given for each of the National Awards, International Award and for Arjuna Award; but only three increments are given belatedly. This is against the HAL Scheme or BPE guidelines. He filed a Writ petition before the Hon'ble High Court W.P. No. 26732/2010; Writ Petition was disposed of on 08.02.2011 observing that BEL also shall form identical Scheme (to HAL) ...etc.

Writ Appeal was filed thereafter, the Appeal was closed as Disposed on 29.08.2011 confirming the Order of the learned single Judge. Still there was delay in framing the Scheme, a contempt petition was filed in CCC No. 2114/2011. It is thereafter unilaterally, the management formulated a scheme dated 09.12.2011; but the said Scheme is not in the spirit of recognition of winners of National Awards and International Medals. There are several shortcomings and anomalies in the said Scheme. It has resulted in the achiever in the sports, working in the 2nd Party being discriminated and deprived of benefits which other sports persons working in the other Public Sectors are enjoying. The 2nd Party did not involve the 1st Party Union, though the Union is a recognised Union.

3. It is further claimed that, a representation dated 26.12.2012 was presented by the Union along with a comparative table, highlighting the difference in the Scheme of HAL and the 2nd Party and demonstrating the disparity and discrimination meted out to the eligible sports persons working in the 2nd Party. They sought for removal of anomalies and discrepancies in the Scheme. They sought to convene a meeting of workers to consider their grievance but there was no response from the 2nd Party. A reminder issued was also not responded. The Union filed a Writ Petition which came to be disposed of with an observation that the grievance can be resolved in a full-fledged trial under 'the Act', Hence this dispute.

Present Scheme is less favourable when compared to that of HAL. The 2nd party and HAL are comparable to each other. But the Scheme which the 2nd party has framed is different and results in less benefits to its sports persons. The Order passed by the Commissioner for person with disabilities directing the Management to formulate policy and Sh. G. Venkataravanappa should have been accorded promotion is violated by the 2nd Party. He is victimised for approaching the Hon'ble High Court thereby specifically introducing Clauses 9.5, 7.0 in the Scheme and depriving promotions for his International Medals, vide clause 6.2.1., which is against the spirit of a 'model employer' for rest in industry to follow.

4. Countering the claim allegations, the 2nd Party stated that there is no proper espousal of the cause – it is an individual dispute but not an Industrial Dispute within the meaning of Sec 2(k) of the Act. M/s. Hindustan Aeronautics Limited is not an Industry which can be termed as an Industry comparable to the 2nd Party; each public Sector is a different legal entity having power to formulate service conditions of its employees, subject to binding guidelines / directions of the Government of India; 1st Party cannot compel the 2nd Party to adopt the Scheme formulated by HAL. Sh. G. Venkataravanappa has been extended monetary and financial benefits even before the Policy dated 09.12.2011 was brought in force (the details of which are listed in the counter statement). It was not incumbent for the 2nd Party to encourage or provide financial assistance or service benefits until the policy was in force; policy came into existence in the year 2011, until the year 2010 there was no representation from the Union. The communication dated 18.06.1986 issued by Joint Director, Government of India, Ministry of Industry, Bureau of Public Enterprise is not a presidential directive and not binding on the 2nd Party; under order No. DPE OM No. 20(5)/95-DPE(GM) dated 10.12.1997 communication dated 18.06.1996 is deleted by the Government of India consequent to liberalisation in Industrial Policy, wherefore it is not incumbent on the 2nd Party to formulate or continue to have policy to reward Sports Persons. The 2nd Party has granted three additional increments and one out of turn promotion to Sh. G Venkataravanappa irrespective of the Scheme not being in place. Having accepted the monetary and service benefits the present claim is not maintainable. He was granted leave with wages for his coaching / training whenever he participated in the sports events; he is supported financially; in recognition of his achievements vide order dated 03.09.2001 he was promoted out of turn and granted three additional increments. The Commissioner for persons with disabilities treated the application of Sh. G. Venkataravanappa as a complaint; he had no jurisdiction to decide the matter; his order is a non-speaking and unsustainable order, it was advisory in nature.

5. Both parties have adduced evidence and advanced argument.

6. The 1st Party adduced evidence through the concerned workman Sh. G Venkataravanappa; his affidavit evidence is mere reproduction of the claim statement averments.

The Senior Deputy General Manager (HR/NS) / MW-1 is examined for the 2nd Party.

7. As per schedule to the reference order, answer is sought about the demand made by the 1st Party to amend / change the Clauses 7, 9.5 and 6.2.1.

8. Let us firstly read those clauses for convenience.

6.2.1 : *Any employee who wins a medal in the International Sports and games events while representing the Country, will be eligible for one additional increment in his existing grade and pay scale.*

7.0 : *The maximum number of increments an employee shall be eligible under this scheme shall be Five increments during his / her entire service.*

9.5 : *The financial benefit shall be extended prospectively for employees coming under clauses 9.1 and 9.4 above.*

9. In view of the reference to 9.1 and 9.4 we will also read those provisions.

9.1 : *The benefits under the above scheme would be extended to the employees who have been conferred any of the specified awards in the past also.*

9.4 : *Benefits shall also be extended within the overall limit of the provisions of the above scheme in cases where no benefit/ partial benefit has been extended earlier.*

10. After the reference was made to this Tribunal the 1st Party focused on clause 9.5 only to urge that only to deprive the workman Sh. G. Venkaravanappa of the benefits accorded by the Scheme, clause 9.5 is introduced.

11. Much is stated about the differences between the Schemes now in vogue in the 2nd Party and HAL; they have also produced a Comparative Table highlighting the differences in the Scheme of HAL and the 2nd Party, as Ex W-13. It is alleged that Scheme has resulted in the achievers in Sports working in BEL being discriminated and deprived of benefits which other sports persons working in other Public Sectors are enjoying and that to, from an early date of 2007 itself. Similar Scheme enforced by other Public Sector have an identical clause to that of 9.5.

12. Though the 2nd Party listed the increments and promotions given to the 1st Party workman, during the cross-examination evidence of MW-1 it emerged that Sh. G. Venkataravanappa who joined the service in Wage Group III as Draughtsman was given normal promotion which comes once in 5 years in the year 1993 to Wage Group IV, again normal promotion in career path IV in the year 1998, he was promoted to Wage Group

V, after 1998 he was due for promotion after 5 years. However, he was given out of turn promotion one year 3 months prior to the date of his normal promotion, and was not given promotion from 1998 onwards. Even if, he was not given out of turn promotion, in the normal course he would have become entitled for promotion on serving 5 years' in the Grade V.

13. During the cross-examination of WW-1 he admits receiving certain benefits like, he was given Rs. 81,500/- in the year 1994 to participate in World Master Games held in Brisbane, Australia and Rs. 10,000/- cash award in the year 1995. He commenced participating in National and International Sports events from 1993 onwards. He denies the suggestion that he is given Rs. 37,502/- in the year 2002 towards expenditure for participating in International Para Olympic Games.

14. From the case made out by the 1st Party Union it tickle down to the point that the whole exercise was towards getting the Sports incentives bestowed by the Sports Scheme vide order No. HO/828/002 dated 09.12.2011 (Ex M-1) in favour of Sh. G Venkataravanappa.

15. In view of Clause 9.5 being the financial benefits will be extended prospectively, said Sh. G Venkataravanappa is deprived of the same. Much is stated regarding the orders passed by Commissioner for Persons with Disabilities, unfortunately said order is only advisory and is not an enforceable order. It is also alleged that 2nd Party by the above scheme has violated the direction issued by the Hon'ble High Court of Karnataka by not framing the scheme analogous to that of HAL. The judgment of the Hon'ble Writ Court is marked as Ex W-6, while disposing the Writ Petition the Hon'ble Writ Court in the preceding Para observed thus :-

> "5. *In the circumstances, no prejudice will be caused to the second respondent if they are directed to consider the advice given by the Commissioner for persons with Disabilities and also the representation given by the petitioner as expeditiously as possible and without further loss of time".*

16. It is clear from the above that there was no mandate by the Hon'ble Writ Court to adopt and enforce the order of the Commissioner for Persons with Disabilities. The appeal preferred by the Management (Ex W-7) was disposed of with the following observation:

> *"4. Aggrieved by the direction, the Appellant has approached this Court contending that HAL has to formulate its own policy or scheme and it cannot be compelled to adopt a particular format or the scheme. The above direction of the learned Single Judge nowhere indicates that there is any compulsion on the appellant to adopt the same scheme or policy. As long as the appellant formulates a scheme or policy on similar lines of other public sector including the recommendations made by the Commissioner for Persons with Disability, we find no good reason to interfere with the order of the learned Single Judge."*

Thus, the Hon'ble Appeal Court accepted the contention of the Management that they cannot be compelled to adopt a particular format or the scheme.

17. It is also evident that the 1st Party Union did not jump into the idea of raising an Industrial Dispute until the Hon'ble High Court disposed of the Writ Petition filed by the 1st Party Union in W.P 16265/2013 DD 19.09.2013 with the observation that :

> "2. *A reading of the scheme indicates that the terms mentioned therein are in the nature of benefits extended to workmen of the respondent – Bharat Electronics Ltd. If the petitioner is aggrieved by any of those terms, being a trade union, is entitled to question the same by initiating conciliation proceedings and having the industrial dispute if necessary, referred to adjudication before the Industrial Court under the Industrial Dispute Act, 1967, whence the parties would have the benefit of a full fledged trial over all the issues. In that view of the matter, I decline to interfere with the terms of the scheme as questioned in this writ petition.*"

18. Thus, though the Sports Scheme has nothing to do with the Service Condition of the Employees in view of the benefit extended under the scheme, it has become the subject matter of this Industrial Adjudication. That being so when it is shown that though the 1st Party is a recognised Union were not consulted while framing the policy, it smells a tint of preoccupation / prejudice against the attempts made by the Union, ever since Sh. G. Venkataravanappa laid his claim before the 2nd Party and filed an Appeal before the Competent Authority and the Union made its representation in his favour vide Ex W-4 dated 14.06.2010. He is a disabled person having a limited source of income from his salary; his expenses are not met each time, he had to travel outstation for participation in the Sports, on such occasions inevitably he must have mobilised the expenses from external sources; he is left with about 2 years of service and the chances of his further participation in the Sports events is too remote. The 2nd Party having framed a scheme to encourage its employees / Sports Persons consequent

upon the undertaking given by them before the Courts has not demonstrated the bonafides of introducing Clause 9.5 in its Scheme.

19. During the evidence of MW-1 it is not demonstrated, Why they have restricted the financial benefit flowing from the scheme prospectively but not with retrospective effect?

Is it their case that giving such retrospective effect will have a financial implication on them? Or is it their case that number of the employees who have received the award mentioned at 5.1 is very many?

During cross examination of MW-1 he has admitted that as of now only one Athlete who has received an award is serving in the Company but he is not an Arjuna Award Recipient.

20. Though the 1st Party does not have any existing right to insist for the identical benefits in the Sports Schemes which are vogue in other identical industries, the fact remains that the scheme suffers from arbitrary and bias in keeping away Sh. G Venkataravanappa from the benefit flowing from the said scheme. Sh. G Venkataravanappa is isolated from other beneficiaries under the scheme probably for the reason he incited the Union to espouse his cause and fought for the same. Clause 9.5 since is hostile to the sole employee Sh. G Venkataravanappa without there being any valid reason, I hold that the demand made by the 1st Party Union to amend clause 9.5 is justified, since no case is made out by them to amend / change Clause 7 and 6.2.1 those clauses shall remain intact.

AWARD

The reference is accepted in part.

The demand made by 1st Party / Bharat Electronics Workers Unity Forum to amend Clause 9.5 in the Sports Scheme vide office order No. HO/828/002 dated 09.02.2011/09.12.2011 of the 2nd Party Management / Bharat Electronics Limited, Bangalore issued for benefit of Sportspersons employed in Bharat Electronics Limited is justified.

Their demand to amend clause 7 and clause 6.2.1 is rejected.

Clause 9.5 stands deleted, so far as the workman Sh. G. Venkataravanappa/Senior Project Draughtsman of the 2nd Party is concerned and release all the consequential monetary benefit in his favour arising from the above Sports Scheme.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 27th February, 2020)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 1 जुलाई, 2020

का.आ. 509.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स स्टेशन प्रभारी, पावर ग्रिड कॉर्पोरेशन ऑफ इंडिया लिमिटेड, रायचूर, बैंगलोर, और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बैंगलोर के पंचाट (संदर्भ संख्या 09/2018) को प्रकाशित करती है जो केन्द्रीय सरकार को 05.03.2020 को प्राप्त हुए थे।

[सं. एल-42012/52/2017-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 1st July, 2020

S.O. 509.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 09/2018) of the Central Government Industrial Tribunal cum Labour Court, Bangalore as shown in the Annexure, in the Industrial dispute between the employers in relation to The Station-in-charge, Power Grid Corporation of India Limited, Raichur, Bangalore, & Others, and their workmen which were received by the Central Government on 05.03.2020.

[No. L-42012/52/2017-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 27TH FEBRUARY 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 09/2018

I Party

Sh. Hanumantha,
C/o Sh. H R Manasaiah,
Karmika Bhawan, Plot No. 74,
Ward No. 34, Askihal,
Raichur - 584 101.

II Party

1. The Management,
Panorama Enterprises,

186/4, 1st Floor, J.C. Complex, Sirur Park Road, Sheshadripuram, Bangalore - 560 020.

2. The Station-in-charge,
Power Grid Corporation of India Limited,

Raichur-Belgaum Road, Askihal Village,
Raichur - 584 101.

Appearance

Advocate for II Party : Mr. Joshua H. Samuel

AWARD

The Central Government vide Order No. L-42012/52/2017-IR(DU) dated 07.05.2018 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

> **"Whether the action of Power Grid Corporation of India Ltd., Raichur in terminating the services and not paying the dues of 12 Contract workmen (as per the list) working through M/s. Panorama Enterprises (Contractor) is legal and proper? If not, what relief are they entitled to and what directions are necessary in this respect?"**

1. As the referred issue in the schedule suggest the listed twelve 1st Party workmen are the contract employees of M/s Panorama Enterprises. Though notice is served on them, they have not appeared before the Tribunal to pursue their claim.

2. The 2nd Party No. 2 is the Power Grid Corporation of India and 2nd Party No.1 is the Contractor. The Power Grid Corporation of India has filed it's statement disputing the identity of the twelve 1st Party members as its workmen. The maintainability of reference is challenged on the ground that, no Union has espoused the cause of the twelve persons and they have no locus standi to raise this dispute.

It is further averred in the statement that, the Power Grid is the Government of India Enterprise and the Central Transmission Utility under the aegis of Ministry of Power. It is a Government company registered under the provisions of Company's Act, 1956 established to develop an efficient power transmission system network; they took up construction and commissioning of 765/400kv Raichur Sub-station work for Inter Region Transmission Line of Solapur to Raichur and then to Kurnool. It was a project to connect Southern Grid with North, East and Western Grids to form a National Grid; the National grid completed on 31.12.2013; at that time construction work was awarded on contract to commission 765/400kv Raichur Sub-station to M/s Bharath Heavy Electricals Limited, New Delhi (BHEL) vide Agreement dated 16.03.2012; accordingly, BHEL has completed the work. So far, Government of Karnataka or Government of India has not prohibited engagement of contract labour in any of the areas of Power Grid. So long contract system is in vogue, in accordance with law. Labourers employed by the contractor are not the workmen / employees of Power Grid.

It is further stated that, Annual Horticultural Maintenance, Cleaning And Housekeeping, Transit Camp maintenance in the Raichur 765/400kv Sub-station was given to Panorama Enterprises vide agreement dated 27.07.2014 for a period of two years. Said agency had a license from the Licensing Officer and the Regional Commissioner (Central), Bellary under Contract (Regulation and Abolition) Act, 1970 to carry out the work order as per the contract. The Power Grid also obtained Registration certificate from the concerned Authority.

On awarding contract, the agency employed it's own labourers and deputed them to carry out the work. The Power Grid is paying wages and extending statutory benefits to its labourers / employees.

The twelve persons concerned, are employed by the Agency and appointment orders and I.D. cards were issued by the agency and wages was paid are as per the notification issued by Ministry of Labour Government of India including revisions if any through the Bank payment; they have taken ATM cards in respect of their account at Canara Bank; they were extended National and Festival Holidays and weekly off on Sundays; they were provided uniform and shoes and ESI identity certificate; the Power Grid has its own rules of recruitment for appointment and conditions of service governing it's employees; the work entrusted to the agency is not perennial in nature; the contractor raises the bill towards the work carried out and the Power Grid makes the payment against the said bills; the work is allotted by the contractor to the persons involved in the reference and they supervise and control the work; it is the contractor who initiates disciplinary action against the members of 1st Party; attendance, payment registers and all other payment records pertaining to them is maintained by the contractor; ESI and PF contribution in respect of the 1st Party members is made by contractor; the contract was the period to 01.08.2014 to 31.07.2016; after the contract the above period, the service of M/s. Panorama Enterprises is not available thus, the 1st Party members are not terminated by the Power Grid. They are not entitled to and not eligible to any of the claims.

3. The 2nd Party No. 1 though served did not appear and the notice issued to the 1st Party returned unserved with the endorsement "PARTY LEFT". The 2nd Party No. 2 placed its evidence through their Deputy General Manager to assert the averments made in their statement in support of their case. They have submitted documentary proof Ex M-2 to Ex M-23. In the absence of anything contrary, to the case of Power Grid / 2nd Party No. 2, I hold that the very framing of the dispute with the presupposition that, the twelve 1st Party members were terminated by the Management of Power Grid Corporation of India Ltd., Raichur is misnomer and erroneous.

The 2nd Party No. 2 Power Grid Corporation since not the employer of the 1st Party members is not under any obligation towards them under the Provisions of 'the Act', the 1st Party members are not entitled for any relief.

AWARD

Reference is rejected.

(Dictated to o/s LDC, transcribed by her, corrected and signed by me on 27th February, 2020)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 1 जुलाई, 2020

का.आ. 510.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महाप्रबंधक,भारत अर्थ मूवर्स लिमिटेड, बैंगलोर, और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बैंगलोर के पंचाट (संदर्भ संख्या 60/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 03.06.2020 को प्राप्त हुए थे।

[सं. एल-42012/176/2012-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 1st July, 2020

S.O. 510.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 60/2012) of the Central Government Industrial Tribunal cum Labour Court, Bangalore as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Bharat Earth Movers Limited, Bangalore, & Others, and their workmen which were received by the Central Government on 03.06.2020.

[No. L-42012/176/2012-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 26TH MAY, 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 60/2012

I Party	**II Party**
Sh. Rajashekaran, S/o Late Rathinaswamy, No. 138, Kennedy's 4th Lane, Orragum Post, Kolar Gold Field - 563120.	The General Manager, Bharat Earth Movers Limited, BEML Nagar Post, Kolar Gold Field - 563115.

Appearance

Advocate for I Party : Mr. Muralidhara

Advocate for II Party : Mr. N. S. Narasimhaswamy

AWARD

The Central Government vide Order No.L-42012/176/2012-IR(DU) dated 13.12.2012 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

> **"Whether the action of the management of BEML KGF-563115 Karnataka, represented by its General Manager is justified in awarding the punishment of 'Removal from Service' w.e.f. 03.07.2010 upon Sh. R. Rajasekaran, Ex Staff No. 352-24119? If not, to what relief the said workman is entitled to?"**

1. The 1st Party workman / former employee of the 2nd Party disputes the legality of the punishment order imposed on him.

He claims that the 2nd Party Management had filed an application before this Tribunal under Sec 33(2)(b) of 'the Act' seeking approval to the order of dismissal passed against him. Vide order dated 24.05.2012 the application was rejected. He sent notice to the 2nd Party to reinstate him into service which was not responded; hence he has raised the present dispute.

2. It is further contented that he was appointed in Group 'A' category at Head Treatment Plant and was subsequently promoted to Group 'B' category; he was issued Charge Sheet dated 24.12.2009 by the 2nd Party alleging unauthorised absence of 61 days between December 2008 to August 2009. He submitted reply denying the allegations. The 2nd Party without accepting his explanation initiated Domestic Enquiry by appointing the Enquiry Officer; the Enquiry Officer was biased, without providing sufficient opportunity and without recording the statements of the Management witnesses he concluded the enquiry. On the basis of the statement given by the 1st Party workman about availing leave for genuine and bonafide reasons he has submitted perverse finding holding him guilty of the alleged charges. He gave his fitting reply to the Enquiry Report unfortunately the 2nd Party passed the order of Removal by endorsing the defective Enquiry Report and perverse finding of the Enquiry Officer; the punishment order is without application of mind, it is arbitrary, unjust, unfair and not sustainable. He was on duty from the date of issuance of charge sheet till the date of his removal, but the 2nd Party has considered the absence period subsequent to issue of charge sheet which is not covered in the charge sheet; he had not remained absent for 82 days as alleged in the dismissal order; there was no such allegation in the charge sheet. The order of removal alleging a misconduct which is not covered in the charge sheet is without power and authority. The punishment order is disproportionate to the alleged act of misconduct; he is without livelihood and is under great financial hardship along with his family members. The action of the 2nd Party is a clear case of victimisation and an act of unfair labour practice. He is discriminated from other workmen who have committed serious acts of misconduct but are allowed to continue in service.

3. The 2nd Party while justifying their action in their statement have stated that he was previously imposed with some or the other punishments for proved acts of misconducts; he was a chronic absentee; he was given lesser punishments on earlier occasions with a view to give him opportunity to reform himself. He had admitted the charges before the Enquiry Officer. In view of the same the Enquiry Officer decided to conclude the proceedings, enquiry was conducted in a just, fair and proper manner, he was given full and fair opportunity

to participate and defend himself. The Enquiry Officer on the basis of the material evidence held him guilty of misconduct and submitted his report dated 21.01.2010. The 1st Party in his representation dated 26.03.2010 reiterating the reasons for absenteeism but did not bring out any fresh material facts / points worth considering. The Disciplinary Authority from his past records found that he had undergone various punishments for similar / other misconducts. By considering the finding of the Enquiry Officer and the representation of the 1st Party the punishment of 'Removal from Service' was passed vide order dated 03.07.2010, the punishment is proportionate to the quantum of misconduct. Lenient view was taken on several occasions of unauthorised absence by him in the past, but he did not improve and continued with the act of misconduct of unauthorised absence. Hence, the punishment order is justified.

4. On the basis of the rival pleadings a Preliminary Issue was raised regarding the fairness and correctness of the Domestic Enquiry, the enquiry records produced by the 2nd Party were marked as Exhibits. Thereafter learned counsel for the 1st Party gave up his challenge to the fairness of Domestic Enquiry. Thus, the Preliminary Issue was answered in the affirmative endorsing fairness of Domestic Enquiry.

5. The 1st Party workman thereafter adduced evidence stating that he had remained absent for 48 days in the year 2008-2009 due to Medical reasons; he was hospitalised for 48 in St. Johns Medical College Hospital, Bangalore for Pneumonia and he has no avocation for life.

During his cross examination he admits that the employees of the 2nd Party are required to take treatment at BEML Hospital, KGF, but he did not take treatment in the said Hospital; medical leave for 48 days was not sanctioned for him. He fairly admitted that during 2008-2009 he did not take treatment at St. John's Medical Hospital, Bangalore but was treated by a traditional healer for Jaundice.

6. The allegation in the Charge Sheet dated 24.12.2009 was, that he remained absent intermittently between December 2008 to August 2009 totally for 61 days.

7. 1st Party did not dispute the period of absence but advanced the reason that he took Ayurvedic treatment for Jaundice and was attending his wife who was seriously ill. However, during the enquiry the details of his absence in between the period of 05.01.2008 to 15.08.2009 were shown as 153 days.

8. The 1st Party workman gave his statement that he remained unauthorisedly absent as mentioned in the Charge Sheet. He reiterated the medical grounds of himself and his wife for his absence.

9. From the Report of Pay rolls the Enquiry Officer recorded that the 1st Party remained absent for 61 days from 30.12.2008 to 15.08.2009. By quoting the statement given by him during the enquiry, the Enquiry Officer returned the finding of guilt as alleged in the Charge Sheet.

10. In his remarks to the Enquiry Report the workman reiterated the Medical problems of himself and his wife.

11. The Disciplinary Authority in the punishment order dated 03.07.2010 quoted the past 8 minor punishments imposed on the workman for similar / other misconducts. The Disciplinary Authority observed that there is no material to excuse for absence on the days covered in the Charge Sheet to mitigate the punishment. Though at Para 10 of the punishment order the Authority noticed that he has remained absent for 82 days during 16.08.2009 to 31.12.2009, the punishment order is imposed for the misconduct of absence for the period between December 2008 to August 2009 for 61 days as quoted in the charge sheet.

12. Before this Tribunal, he produced Xerox copies of the two Medical Certificates dated 28.08.2008 and 03.09.2008 and a letter of Doctor dated 09.09.2008 (Ex W-1 to Ex W-3) to demonstrate that he was treated at St. John Medical College Hospital between 14.07.2008 to 04.08.2008, 18.08.2008 to 25.08.2008 and again from 28.08.2008 to 03.09.2008. Not only that the period of hospitalisation in the medical sickness certificate overlap each other, he himself contradicts his own documents by his admission during cross examination that he has not taken treatment between 2008-2009 at St. John's Medical Hospital. That apart the period covered under Ex W-1 to Ex W-3 was not the subject matter of enquiry. His past records was not made part of the Charge Sheet or the evidence during the enquiry which was referred by the Disciplinary Authority at the final order. However the 1st Party workman did not dispute suffering the 8 minor punishments in the past. It is the submission at the Bar that an approval application filed under Sec 33(2)(b) is still pending before the State Forum.

13. Sh. MD for the 1st Party submits that he had put in service of more than 25 years by the time punishment order was passed. Even otherwise, his unauthorised absence of 61 days is not a exorbitant period and he could not produce supporting medical documents since he has taken treatment from a traditional healer; he was not a habitual, before issuing Charge Sheet no call notice was issued directing him to report to duty. In the circumstance the punishment order imposed is harsh and excessive. Now he has crossed the age of

superannuation hence, a monetary compensation proportionate to the period of service he lost due to the punishment order may be awarded.

14. It was not the case of the 1st Party workman that he was prepared / willing to report to duty as on the date the Charge Sheet was served on him. He has pleaded in the claim statement that he was on duty on the date he was served with charge sheet, he has unequivocally admitted the charges before the Enquiry Officer and also during his representation to the Disciplinary Authority, he had not produced any document pertaining to the indisposition of himself and his wife for the relevant period. In the past 8 occasions he was imposed minor punishments for the misconduct of unauthorised absence which he is not disputing. The finding of the Enquiry Officer is based on his unconditional admission of charges, hence neither arbitrary nor perverse. The punishment order is passed on the basis of the Enquiry Report and in the back drop of his past records. There is no illegality or unjustifiability in the punishment order challenged.

AWARD

The reference is rejected.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 26th May, 2020)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 1 जुलाई, 2020

का.आ. 511.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स सहायक पुरातत्वविद्, भारतीय पुरातत्व सर्वेक्षण, बेल्लारी, बैंगलोर, और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बैंगलोर के पंचाट (संदर्भ संख्या 14/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 03.06.2020 को प्राप्त हुए थे।

[सं. एल-42012/78/2011-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 1st July, 2020

S.O. 511.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 14/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the Industrial dispute between the employers in relation to The Assistant Archeologist, Archeological Survey of India, Bellary ,Bangalore, & Others, and their workmen which were received by the Central Government on 03.06.2020.

[No. L-42012/78/2011-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 26TH MAY, 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 14/2012

I Party	**II Party**
Sh. Barkat Ali, S/o Sh. Ali Sab, 2nd Ward, Kamalapur, Hospet Taluk, Bellary - 583221.	The Assistant Archeologist, Archeological Survey of India, Museum, Kamalapur, Bellary - 583 221.

Appearance

Advocate for I Party : Mr. V. S. Naik

Advocate for II Party : Mr. Sathish B

AWARD

The Central Government vide Order No. L-42012/78/2011-IR(DU) dated 24.04.2012 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether the action of management of Archeological Survey of India, Archeological Museum, Kamalapur, Bangalore in terminating the service of Sh. Barkat Ali w.e.f. 16.08.2004 is justified? If not, what relief the workman is entitled to?"

1. 1st Party in his statement has claimed that, he was appointed during the year 2001 in the 2nd Party Management and was initially engaged as Electrician and was paid wages on Hand Receipt basis; subsequently he was taken as Daily Wager during May 2003 and worked till the date of refusal of employment on 16.08.2004; he was not paid bonus and other statutory benefits. The 2nd Party denied his claim, his duty was continuous and perennial, the post for which he was appointed continued to exist even after he was refused employment; his service was extracted by the 2nd Party by giving different nomenclature to his post. The action of the 2nd Party in refusing employment to him amounts to termination of service, since is in violation of mandatory requirements of Sec 25-F of 'the Act' and is void ab-initio.

2. The claim is contested on the following lines, 2nd Party is created by the Central Act known as 'Ancient Monuments and Archaeological Sites and Remains, Act 1958'; the main object is to provide for preservation of Ancient and Historical remains retrieved from Excavation and Exploration, accession the antiquities preserve in the Museums, display and safe custody of monuments and Archaeological sites and remains of National Importance, for regulation of Archaeological Excavations and for the protection of sculptures, carvings and other like objects...' The 1st Party was initially given job of electrical repair works during December 2002 to January 2003 and February 2003; he is paid for the piece work he attended. Later on he was engaged on daily wages as a casual labourer / light mazdoor for attending watch and ward duties from 20.05.2003 onwards. He was on daily wages as casual labourer / light mazdoor intermittently from May 2003 to December 2003 for 175 days and from January 2004 to July 2004 for 149 days. He was paid as casual labourer on daily wages as per the Labourer Rates notified by PWD (the month wise details of his attending duty as detailed in the statement). He is not permanently coming under the work of the 2nd Party and his engagement was as and when required. He has not worked for 240 days in any of the years; he is doing business as Electrician; he remained absent for weeks together without attending to the works of the 2nd Party during the period of his engagement; he had taken loan from Bank of India, Kamalapur, under Self-employment Scheme sponsored by the Town Municipal Corporation; he owns an Electrical shop at Kamalapur and he stopped attending the office. In his representation to the Regional Labour Commissioner dated 14.02.2010 he has accepted the said fact. The 2nd Party is not an Industry; the statutory duties entrusted to it are sovereign function of the State. Though it is declared as a World Heritage Centre by UNESCO, it is not funding to protect the monuments; it is not carrying on busy or trade, therefore it is not an Industry.

3. To sustain their stand, 2nd Party adduced evidence through its Deputy Superintending Archaeologist / Site Manager and produced the attested copies of 14 documents (EX M-1 to Ex M-14) they are the Hand Receipts under the acknowledgment of the 1st Party workman for having received the amount towards the cost of the work he attended, a reply submitted by the 2nd Party to the ALC consequent upon the dispute raised by him, the details of the dates on which he attended the duties and the Photostat copy of the orders passed by Central Administrative Tribunal, Ahmedabad Bench, Jaipur Bench and New Delhi Bench pertaining to similar claim against the Archaeological Survey of India which were ultimately dismissed, all the orders are endorsed by the Hon'ble High Court.

4. It is not only that the witness is not cross examined but there is no rebuttal evidence also. The workman who raised the dispute has not established that he served the 2nd Party continuously in a calendar year

preceding the date of his termination. He is not appointed to any permanent post existing in the 2nd Party. Neither there is any appointment order nor termination order, even if he is orally refused employment, having not established the fact of continuous service (as contemplated by Sec 25-B of 'the Act') his termination does not amount to illegal retrenchment. He is not entitled for any relief.

AWARD

The Reference is rejected.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 26th May, 2020)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 1 जुलाई, 2020

का.आ. 512.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स अध्यक्ष और प्रबंध/निदेशक, भारत इलेक्ट्रॉनिक्स लिमिटेड,, बैंगलोर, और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बैंगलोर के पंचाट (संदर्भ संख्या 41/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 04.06.2020 को प्राप्त हुए थे।

[सं. एल-42011/21/2010-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 1st July, 2020

S.O. 512.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 41/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the Industrial dispute between the employers in relation to The Chairman and Managing/Director, Bharat Electronics Limited, Bangalore, & Others, and their workmen which were received by the Central Government on 04.06.2020.

[No. L-42011/21/2010-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 28TH MAY, 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 41/2011

	I Party	**II Party**
1.	The General Secretary, BEL Mazdoor Sangh, Subedar Chatram Road, Bangalore – 560009.	The Chairman and Managing Director, Bharat Electronics Limited, Outer Ring Road, Nagavara, Bangalore – 560045.
2.	The General Secretary, Bharat Electronics Workers Union, C/o Bharat Electronics Ltd., Jalahalli Post, Bangalore – 560013.	
3.	Joint Secretary, Bharat Electronics Workers Unity Forum, Jalahalli Post, Bangalore – 560013.	

Appearance

Advocate for I Party : Mr. Muralidhara

Advocate for II Party : Mr. P. D. Vishwanath

AWARD

The Central Government vide Order No. L-42011/21/2010-IR(DU) dated 10.10.2011 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether the action of the management of Bharat Electronics Limited, Bangalore, in issuing notice bearing No. HO/798/018 dated 28.09.2010 to all concerned employees thereby intending to change the calculation of Leave Encashment on the basis of 30 days a month instead of 26 days as provided under Office Order No. HO/798/007 dated 13.05.1982, is legal and justified?"

1. There are 2 sets of claims placed before this Tribunal. The 1st Party No. 1 BEL Mazdoor Sangh filed individual claim statement and 1st Party No. 2 and 3 i.e. BEL Workers Union and BEL Workers Unity Forum filed another set of claim statement.

2. The BEL Mazdoor Sangh assails the proposal *to change the calculation of leave encashment on the basis of 30 days a month instead of 26 days* on the following grounds:

(i) The action is hit by principles of natural justice since the 1st Party has no say in it.

(ii) The provisions of Section 9A of 'the Act' i.e., giving 21 days' notice is not complied.

(iii) The reasons given by the 2nd Party is audit objection; that is not a justifiable ground for change.

(iv) The 2nd Party has all the capacity to pay and comply with the same.

(v) The said service condition is covered by the existing settlement and hence, no change can be made

(vi) Change amounts to unfair labour practice.

(vii) Calculation at 26 days is in practice for more than 30 years therefore is implied service condition.

3. The 1st Party No. 2 and 3 i.e. BEL Workers Union and BEL Workers Unity Forum in one tone would claim that, in view of the proposed change in calculation of leave encashment vide Office Order dated 13.05.1982, 3500 workmen working with the Bangalore Unit of the 2nd Party are affected. By virtue of the revised Office Order there would be refund of nearly 15% to 16% of the wages of the workmen while granting benefit of computation of leave encashment amount. Consequently, the loss would be substantial and this would affect their livelihood. Since, 01.04.1982 the employees of BEL are getting their leave encashment calculated and paid by dividing the 'Basic Pay + Dearness Allowance' by 26 days, this practice of over 25 years has become service condition. Hence, change of this long-standing service condition is highly objectionable and unwarranted. There is a binding Statutory Settlement signed on 20.12.2000 and the recent Settlement signed on 21.06.2010 under which there is a proviso (19) continuing the other existing facilities and benefits unaltered to the disadvantage of the workmen. There is no reason to adopt the formal of leave encashment applicable to Government employees for the 1st Party workmen. The encashment of accumulated leave at the time of retirement is considered as retirement benefit, any attempt to reduce the said benefit is unjustified and illegal.

4. The common objection of the 2nd Party to the above claim is, the 2nd Party framed the Scheme of encashment of annual leave vide Office Order dated 03.12.1977 and it is modified from time to time; the computation of encashment of annual leave amount per day is arrived at by adding the monthly wages (Basic Wages + D.A) and dividing the same by 30 days. By wrongly relying on the decision of the Supreme Court in M/s Digvijay Woolen Mills Ltd vs. Mahendra Prasad Butch and others reported in AIR 1984 SC 1944, the Office Order was amended w.e.f 13.05.1982, thereby computation of encashment of annual leave amount per day is arrived at by adding the monthly wages (Basic pay + Personal Pay + D.A) and divide the same by 26 days instead of 30 days; said Office Order was consolidated and reissued w.e.f 04.07.1985. It is set out in the said Office Order that the Management reserves it's right to interrupt, modify or withdraw the above scheme at its discretion.

It is further contended that in the year 2005, the annual proprietary audit carried out by the Officer of the Comptroller and the Auditor General of India raised objection to the said computation of encashment of annual leave; a report was submitted to the Government of India and a letter dated 10.08.2005 was addressed to

the Ministry of Heavy Industries and Public Enterprises mentioning that some of the Public Sector Undertakings (PSUs) including the 2nd Party are still adopted 26 days per month and making excess payment to their employees and requested to issue instructions to ensure that PSUs do not make excess payment to the employees by adopting 26 days a month. The Government of India in its Office Memorandum issued during August 2005 agreed with the Audit objections, subsequently, Ministry of Defence and Department of Public Enterprises under their communication dated 31.05.2006 and 07.06.2006 directed the 2nd Party Management to take necessary action in the matter and directed that all Central Public Sector Enterprises shall adopt 30 days a month for calculating leave encashment. The 2nd Party being a Public Sector Undertaking is bound to follow directive of the Ministry of Defence and Department of Public Enterprises of the Government of India; they have no other alternative but to make necessary changes. No valid dispute can be raised against the 2nd Party for obeying such direction. The 2nd Party vide its Order in HO/798/014 dated 23.06.2006 amended clause 5.2 of the earlier Office Order regarding encashment of annual leave by substituting 30 days in place of 26 days. BEL Officer's Association and certain Trade Unions challenged the above amendment before the Hon'ble High Court of Karnataka in W.P. Vide order dated 19.12.2006 Hon'ble High Court quashed the office order of HO/798/014 dated 23.06.2006, liberty was reserved to the 2nd Party to pass appropriate Orders in accordance with Law after providing opportunity to the petitioners therein. Thereafter 2nd Party issued notice dated 01.03.2007 proposing to amend the calculation of annual leave; many Trade Unions and employees submitted their objection.

It is further pleaded, on failure of the conciliation proceedings the Assistant Labour Commissioner (C) submitted failure Report dated 16.02.2010 to the Government. Vide communication dated 14.05.2010, it was informed that the Government of India has come to the conclusion that, the dispute is not fit for adjudication since, modification of the Scheme of encashment of annual leave is a policy matter of the Establishment and cannot be constrained to Industrial Dispute. Challenging the said communication, 1st Party No. 2 preferred Writ Petition No. 18505/2010 and 1st Party No. 1 filed WP No. 20168/2010 and 1st Party No. 3, WP No. 17514/2010 before the Hon'ble High Court. In WP No. 18505/2010, the Hon'ble High Court passed Interim Order on 26.03.2010 for four weeks staying the operation of the Order No. L-42011/21/2010-IR(DU) dated 14.05.2010 and directed to maintain status-quo in computing the leave wages for the purpose of leave encashment benefit as it existed on 14.5.2010; said interim Order was vacated vide order dated 07.09.2010.

Thereafter, the 2nd Party issued Office Order No. HO/798/018 dated 28.09.2010 implementing the calculation of annual encashment on the basis of 30 days w.e.f. 24.06.2009. The 1st Party raised dispute against the said Order during the pendency of the conciliation proceedings, the Hon'ble High Court vide its Order dated 10.02.2011 disposed off W.P No. 18505/2010, W.P. No. 20168/2010 and WP No. 17514/2010. While disposing off the matters, the Hon'ble High Court directed the Conciliation Officer to continue the proceedings and dispose off the same in accordance with Law within two months from the date of receipt of the copy of the Order. It was made clear that, the observations made in the order dated 14.05.2010 shall not influence the Government of India in subsequent proceedings. It is thereafter ALC (C) held conciliation meetings and the conciliation failed.

5. It is further stated by the 2nd Party that, the grounds urged in the Claim Statement are not sustainable. There is no violation of Sec 9-A of 'the Act'. The 2nd Party has no other alternative but to make necessary changes as per the directives of the Ministry of Defence and Department of Public Enterprises of Government of India, changes made contrary to the said directive will be contrary to Law. There is no settlement regarding encashment of annual leave. Initially, encashment of annual leave was on the basis of 30 days a month and not 26 days, subsequently, it was changed by wrongly relying on the decision of Supreme Court AIR 1984 SC 1944. Said decision was rendered leave encashment for the employees under the then existing provisions of payment of Gratuity Act and same is not acceptable in all circumstances. The Company has its right to correct its own error and the proposal to amend the Scheme is in accordance with Law.

6. The 2nd Party adduced evidence by examining its Senior DGM as its witness reiterating its stand and produced 29 documents as Ex M-1 to Ex M-29. His cross-examination evidence did not yield any benefit to the 1st Party Unions. There was no rebuttal evidence.

7. Heard.

8. Going through the grounds of attack on the notice dated 28.09.2010, first and foremost contention is, they ought to have complied with Sec 9-A of the ID Act by giving 21 days' notice, which is not done. In this regard, legal position is the requirement of a notice under Sec 9-A of 'the Act' is warranted if only the Employer proposes to the effect any change in the conditions of service applicable to any workman, in respect of any matter listed in item 1 to 11 of the 4th Schedule to 'the Act'. Unfortunately, "encashment of leave benefit" does not fit in any of the above items. It is also a fact that encashment of leave benefit on the calculation made for 26 days a month was never the subject matter of Industrial Settlement between the parties.

Though the 1st Party are not entitled for a 21 days' notice under Sec 9-A of 'the Act', it is well within their knowledge that pursuant to the audit objection, vide office memorandum of August 2005, the Government of India issued a Office Memorandum that "Unless specifically indicated a month is normally taken as to consist 30 days as in the case of general practice being followed in Central Government...". They cannot plead that the communication sent in this regard by the office of the Comptroller and Auditor General of India to the Depart of Public enterprises dated 10.08.2005 (Ex M-5) and the consequent office Memorandum issued by the Ministry of Heavy Industries and Public Enterprises of Aug 2005 (EX M-6), the communication (along with the enclosures) from the Ministry of Defence dated 31.05.2006 (Ex M-7) advising to take appropriate action. It was noticed at that point of time itself that CPSEs viz BEL and HAL have allowed excess leave encashment by adopting 26 days as a month instead of 30 days. The 2nd Party was communicated by the Joint Secretary of Government of India, the audit para and the Ministry's letter dated 31.05.2006 on the subject of leave encashment in full. The Amendment was brought in respect of encashment of annual leave vide Office Order Dated HO/798/2014 dated 23.06.2006 thereby substituting 30 days for the month instead of 26 days.

9. The Hon'ble High Court in the Writ Petition 8743/2006 (L-RES) C/W 8653/2006 (L-RES) set aside the official Order of 23.06.2006 (EX M-10) on the technical reason that the Order is passed by the Additional General Manger (P and Revenue Inspector) and not issued by the Board of Directors of the Respondent. On taking note of the fact that the Scheme of 1977 and the subsequent amendment of 1982 though empowers the Management to alter, modify or withdraw the scheme, same shall not be done without hearing the affected parties, since the employees enjoy the benefit from 1982 to 2006, Management was reserved liberty "*to pass appropriate orders in accordance with Law after providing opportunities to the petitioners if they are so advised*".

It is thereafter notice of the proposal of 30 days a month was published vide notice dated 01.03.2007 (EX M-12) calling upon the representations of the employees and trade Unions etc. The representations sent by the 1st Party Unions are also borne on the record as EX M-13 and Ex M-14. Subsequent to the vacation of the Interim Order of status-quo in WP No. 18505/2010, the 2nd Party has issued the notice HO/798/018 dated 28.09.2010 (However copy of the said Order is not produced by them). In the circumstance it can be safely inferred that the Management has given opportunity to the affected parties in respect of the subject of change proposed.

10. As such the calculation of the leave encashment by treating 30 days for a month instead of 26 days per month is the correct proposition and stands to common prudence. Though the change brought in vide order of 28.09.2010 causes financial loss to a certain extent to the employees, it does not appeal to the judicial consciousness that error committed once shall be perpetuated for infinity even after the mistake was highlighted during Audit inspection. There is no merit in the claim of the workmen to direct the 2nd Party to continue the computation as 26 days a month. Hence, the action of the Management in issuing notice bearing No. HO/798/018 dated 28.09.2010 to all concerned employees thereby intending to change the calculation of leave encashment on basis of 30 days in a month instead of 26 days as provided under Office Order No. HO/798/007 dated 13.05.1982 is legal and justified.

11. By virtue of the Order of 28.09.2010 many of the employees who had received leave encashment on the basis of 30 days a month will stand to lose. Having regard to the fact that the employees had enjoyed the Scheme of 26 days a month for over 3 decades, it is required that the 2nd Party shall not insist refund of the excess amount drawn by the employees under the Scheme of Office Order HO/798/007 dated 13.05.1982.

AWARD

The reference is partly accepted.

The 2nd Party is directed not to initiate action for recovery of the excess leave encashment drawn if any, by the employees under the Office Order HO/798/007 dated 13.05.1982.

(Dictated to o/s LDC, transcribed by her, corrected and signed by me on 28th May, 2020)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 1 जुलाई, 2020

का.आ. 513.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स मुख्य महाप्रबंधक, भारत अर्थ मूवर्स लिमिटेड, बैंगलोर, और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बैंगलोर के पंचाट (संदर्भ संख्या 01/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 04.06.2020 को प्राप्त हुए थे।

[सं. एल-42012/138/2010-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 1st July, 2020

S.O. 513.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 01/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the Industrial dispute between the employers in relation to The Chief General Manager, Bharat Earth Movers Ltd., Bangalore, & Others, and their workmen which were received by the Central Government on 04.06.2020.

[No. L-42012/138/2010-IR (DU)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 01ST JUNE, 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 01/2011

I Party	**II Party**
Sh. B. K. Muralidhara, Since deceased by LRs	The Chief General Manager, Bharat Earth Movers Ltd., Bangalore Complex, New Thippasandra, Bangalore – 560022.
a) Smt. Shobha B Wife of Sh. B. K. Muralidhara	
b) Sh. Amith Kumar M. S/o Sh. B. K. Muralidhara	
c) Sh. Pawan Kumar M. S/o Sh. B K Muralidhara	
All are residing at Door N. 227/5, Manjunatha Nilaya, 4th Main Bhyrappa Block, Thyagarajanager Post, Bengaluru - 560028.	

Appearance

Advocate for I Party : Smt. Manajulamma K.

Advocate for II Party : Mr. N. S. Narasimha Swamy

AWARD

The Central Government vide Order No. L-42012/138/2010-IR(DU) dated 08.12.2010 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether the action of the management of Bharat Earth Movers Limited, Bangalore in inflicting the punishment of dismissal on Sh. B. K. Muralidhara from the services w.e.f. 28.07.1999 is legal and justified? If not, what relief the workman is entitled to?"

1. The 1st Party workman who raised the dispute is now expired and is represented by his Class-I Heirs.

1st Party workman was working as a Cook and had served the 2nd Party since 10.06.1985. He was removed from service on certain allegations came to be proved in a duly held Departmental Enquiry.

In his claim statement he had challenged the procedure of Domestic Enquiry conducted against him on the charges, alleged that the findings of the Enquiry Committee are unreasonable, perverse and the Disciplinary Authority had passed the punishment order without serving proper show cause notice before accepting the findings of the Enquiry Committee. He assailed the punishment order, that it is not a speaking order, not legal for not considering his past records. He further vented out that the dismissal is shockingly disproportionate to the alleged act of misconduct of unauthorised absence. If the dismissal order is confirmed his entire family would face mental agony and financial hardship.

2. The 2nd Party denied all the allegations levelled against the validity of the Domestic Enquiry, enquiry finding and legality of the punishment order.

3. On the basis of the rival pleadings a Preliminary Issue in respect of fairness and correctness of the Domestic Enquiry was raised, tried and adjudicated holding that 'Domestic Enquiry held against the 1st Party by the 2nd Party is fair and proper'.

4. Argument advanced by both learned counsels.

5. Allegations against the workman in the notice / charge sheet dated 11.07.1998 (Ex M-1) was, he remained absent for work without leave or permission continuously from 05.05.1998 till date – his attendance in the past is not satisfactory; he was called upon to report to duty on or before 20.07.1998 and submit his explanation in writing and show cause why one of the penalties provided under Clause 22 of the Standing Order should not be imposed on him.

He was issued similar notice / charge sheet dated 31.08.1998 for being absent without leave or permission from 12.07.1998 till date and was called upon to report to duty on or before 12.09.1998.

6. Since the workman did not respond enquiry was initiated; though served with enquiry notice, he did not appear before the Enquiry Committee. The Committee proceeded to record the evidence; the management examined two witnesses and produced extract of his attendance particulars. The Enquiry Committee vide its meeting held on 16.12.1998 concluded that 'absence of Sh. B K Muralidhara, R618-19518 for a period of 119 days during May 1998 to August 1998 is without leave or without permission. Therefore Sh. B. K. Muralidhara, R618-19518 is guilty of the charges of misconduct levelled against him under Clause 21.20 of the Standing Orders viz. "Habitual absence without leave or without permission or absence without leave for more than 10 consecutive days", punishable under Clause 22 of the Standing Orders.

The punishment order was communicated to the workman.

7. The Disciplinary Authority vide order dated 20.02.1999 accepted the enquiry finding, referred to his past records that he was absent on previous six occasions as follows:

i) For remaining absent for 68 days during October 1998 to January 1999 he was warned.

ii) In respect of the absence for 225 days during January 1989 to October 1990 his salary was reduced to the minimum of the grade for a period of one year.

iii) For remaining absent for 20 days during August 1992 he was warned.

iv) In respect of absence for 50 days during December 1993 to January 1994 his increment was stopped for a period of two years.

v) In respect of his absence for 123 days during April 1994 to September 1995 his salary was reduced to two stages for a period of one year.

vi) He was warned for his absence for 210 days during July 1996 to January 1997.

In the light of the above, the Disciplinary Authority proposed the punishment of 'Dismissal from Service' under clause 22.2 (iv) of the Standing Orders with liberty to the workman to submit his representation if any in writing.

8. Subsequently, the proceeding culminated in dismissal of the deceased 1st Party workman vide order dated GMR/118/58 dated 26.07.1999 (However, the final order is not placed before me for perusal). The 2nd Party had filed an application before the State Labour Court under Sec 33(2)(b) of 'the Act' seeking approval of the punishment of dismissal implicated on the workman and the application was allowed vide order dated 15.07.2003. After a long gap of time i.e. in the year 2009 the workman filed a Writ Petition before the Hon'ble High Court of Karnataka in W.P No. 31398/2009 (L-TER) seeking direction to the State Government to receive his petition, hold conciliation meeting for withdrawal of the dismissal order dated 26.07.1999 etc. The Hon'ble High Court of Karnataka vide order dated 30.10.2009 rejected his petition reserving liberty to make representation to the 2nd Respondent therein i.e. The State of Karnataka represented by its Secretary.

9. Before this Tribunal, it is nowhere shown that he is the concerned workman in a pending reference before this Tribunal which would have warranted the Management to take approval of his dismissal under Sec 33(2)(b) of 'the Act'. There is a long gap of time between his dismissal dated 28.07.1999 to 08.12.2010 on which date the dispute was referred to this Tribunal. In his claim petition he had stated that he was dismissed from service on 26.07.1999. However, neither of the parties placed on record the dismissal order challenged in this reference. Vide memo dated 21.01.2020 learned counsel for the 2nd Party placed before me the notice dated 20.02.1999 stating it to be the dismissal order which was a notice of proposal of the punishment of dismissal from service. This notice is annexed with the postal acknowledgment also.

10. Going through the Enquiry Report, it is founded on the undisputed facts of his continuous absence between 05.05.1998 to 11.07.1998 and from 12.07.1998 to 31.08.1998 and also in respect of his unsatisfactory past records. It is not an isolated / stray incident on one or two occasion; he was a habitual absentee and was punished on previous six occasions. I have nothing before me to intervene in the punishment order in exercise of the jurisdiction under Sec 11-A of 'the Act'.

AWARD

The Reference is rejected.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 01st June, 2020)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 6 जुलाई, 2020

dk vk 514.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दक्षिण पश्चिम रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बंगलोर के पंचाट (संदर्भ संख्या 06/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.07.2020 को प्राप्त हुआ था ।

[सं. एल-41012/45/2015-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 6th July, 2020

S.O. 514.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 06/2016) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Bangalore as shown in the Annexure, in the industrial dispute between the management of South Western Railway and their workmen, received by the Central Government on 06.07.2020.

[No. L-41012/45/2015-IR (B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 24TH JUNE, 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 06/2016

I Party	**II Party**
Sh. G. J. Devadas, H. No. 30C / 19, Karunya Colony, Near Keshwapur Police Station, Hubli - 580020.	The Divisional Railway Manager (Personnel), Divisional Office, South Western Railway, Hubli - 580020.

Appearance

Advocate for I Party : Mr. M.C. Hittalmani

Advocate for II Party : Mr. Ramesh Upadhyaya

AWARD

The Central Government vide Order No. L-41012/45/2015-IR(B-I) dated 07.01.2016 / 12.01.2016 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

> **"Whether the denial of granting of seniority and promotion to Sh. G. J. Devadas by the Management of South Western Railway is legal and justified? If not, what are the reliefs the workman is entitled to?"**

1. The claim of the 1st Party is, he was appointed as Loco Kalaci Group D employee in Steam Loco shed of the 2nd Party on 30.11.1974 and was promoted to the post of GM fitter Helper. He is superannuated on 30.06.2015 and retired from the service of the 2nd Party, while working as Mail / Express Guard in operating department. In the year 1985, there was a vacancy in the post of Engine fitter Grade-III (Group C); the department invited applications to fill up the vacancies by conducting Grade test by giving 25% artisan quota to the employees working in steam loco Shed, Hubli Division. The 1st Party was eligible for the said post and after passing the written exam of the Trade Test he underwent six months Departmental Training in carriage and wagon workshop, Hubli. After the Training period, he reported to his original working section of steam loco shed on 10.04.1986. Though, vacancies were available within two months from the date of the Trade Test, promotion was given to him w.e.f 06.12.1986 after a delay of 8 months.

It is his further case that, as per Master circular of 43, those who have completed two years of service as Grade-III were eligible to appear for the Trade Test to be qualified for further promotion to the Grade II / Engine Supervisor. On 08.06.1990, the Department invited application from the employees working in Grade-III; he appeared for the Trade Test on 21.04.1990 and was qualified for next promotion; he was promoted from engine Fitter Grade II w.e.f 01.03.1993. On 10.04.1995, the Meter Gauge Steam Loc Shed was closed and Broad Gauge Diesel Loco was introduced at Hubli division. He underwent 6 months training as electrician at Diesel training Centre, Guntkal and his service was utilised in trouble shooting point at electrician / electrical speedometer. He was redeployed on 25.02.2000 to the operating Department as Goods Guard at Hubli Depot and superannuated as Mail / Express Guard in the operating Department.

He has further claimed that, while promoting from the post of Engine fitter Grade II in the year 1993, his seniors were not promoted; on 19.01.1994 revised seniority list was published; as per restructuring of the promotion, his seniors were given promotion as Engine fitter Grade-II from 1993 when he was promoted. In the Steam Loco Shed Department where he was working there were 51 vacancies of skilled Grade I posts in the year 1993; only 22 employees working with him were promoted w.e.f 14.07.1994 by giving retrospective effect from 01.03.1993. Though, he was eligible for promotion, he was not promoted, instead 29 posts of Grade-I were surrendered. Hence, his prayer is for a direction to the 2nd Party to promote him to the Post Skill Grade-1 w.e.f 01.03.1993, when similarly situated employees were promoted and to pay difference of monetary benefits.

2. The claim is contested by the 2nd Party on the following lines, the dispute raised by him is purely service matter which is already adjudicated by Central Administrative Tribunal, Bangalore on O.A. No. 170/00129/2015. While dismissing the case, it was held that "*the matter which should have been taken up in the year 1994 cannot engage the attention of adjudication in 2015 after a year of 21 years.*" The claim is time barred; this Tribunal has no jurisdiction. He had preferred the Writ Petition against the Order of the CAT but withdrew the Petition. He is not a workman within the meaning of Sec 2(S) of 'the Act' and claim is not maintainable under 33(c) (2) of the Industrial Dispute Act.

3. Sh. RU for the 2nd Party has placed reliance on the Judgement of the Hon'ble High Court in the matter of Assistant Engineer (CXL) Maintenance vs. S.K. Dinde which prohibits the jurisdiction of the Labour Court once the Administrative Tribunal has disposed off employee's grievance on merits. The Hon'ble High Court relayed on the Judgement of the Apex Court in the matter of Taluka Panchayat vs. Ichhaben Shivaram Dave reported in 1999 SCC (L&S) 1083 which had ruled that, "*....reference made to the Labour Court after the dispute had been earlier adjudicated in the manner indicated is clearly incompetent.*" A copy of the Judgement of the Central Administrative Tribunal is borne on record.

I am convinced that, since the workman was not successful in his attempt to get a relief of a deemed promotion to the post of Skilled Grade-I w.e.f 01.03.1993 at the hands of Central Administrative Tribunal, has raised the present dispute in his individual capacity. The dispute not being a Termination, Dismissal or Retrenchment, same should have been espoused by a Trade Union to give the colour of 'Industrial Dispute' as contemplated by Sec 2(k) of 'the Act', is not at all maintainable. Moreover, the matter having been adjudicated before a Forum having jurisdiction, is hit by principles of Res-judicata also.

AWARD

The reference is rejected as non-maintainable.

(Dictated to o/s LDC, transcribed by her, corrected and signed by me on 24th June, 2020)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 6 जुलाई, 2020

dk- vk- 515.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बंगलोर के पंचाट (संदर्भ संख्या 40/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.07.2020 प्राप्त हुआ था।

[सं. एल-12025/01/2020-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 6th July, 2020

S.O. 515.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 40/2013) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Bangalore as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 06.07.2020.

[No. L-12025/01/2020-IR (B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 19TH JUNE, 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

ID 40/2013

I Party	**II Party**
Sh. N.V. Arunkumar, N H 13, Mallapura Road, Kanakanagara 5th Cross, Near Taramandala, CHITRADURGA – 577501.	The Deputy General Manager, State Bank of India, Davangere Region, Regional Office, DAVANGERE.

Appearance

Advocate for I Party : Mr. M. Rama Rao

Advocate for II Party : Mr. Ramesh Upadhyaya

AWARD

1. The petitioner is the former employee of the erstwhile 'State Bank of Mysore' presently 'State Bank of India'. He was removed from service of the 2nd Party by the Order of the Disciplinary Authority dated 22.03.2013 since allegation of misconduct came to be proved against him, in a departmental enquiry.

In his Claim Petition, he challenged fairness of the procedure adopted by the Enquiry Officer, correctness of Enquiry Report and legality of the Punishment Order. He contends that he has not committed any misconduct as alleged in the Charge Sheet; the extreme penalty of removal from service is highly excessive, harsh and shockingly disproportionate.

2. The 2nd Party denied all the allegations made against the fairness of Domestic Enquiry, correctness of Enquiry Report, the legality of Punishment Order and sought to justify the action taken against the workman.

3. On the basis of the rival pleadings touching the fairness of the Domestic Enquiry, a Preliminary Issue was raised and through the Enquiry Officer enquiry records were marked as Ex M-1 to Ex M-15. At that stage 1st Party gave up his challenge to the fairness of the enquiry procedure.

4. The workman has given evidence before this Tribunal that he suffered a lot due to unemployment and now making a living as Accountant in a shop.

5. Both parties have advanced argument, written brief is submitted for the 1st Party.

6. The epitomise of the allegation vide Charge Sheet dated 16.04.2012,

Firstly, his transactions in his current account No. 54044354651 is disproportionate to his known source of income (20 transactions for the period 13.04.2010 to 19.05.2011 totalling Rs. 6,15,000/- is transacted, is listed in the charge).

Secondly, there is a large number of cash deposit and transfer entries in his wife's SB Account No. 64043404951, the transfer entries ranging from Rs. 250/- to Rs. 800/- - voucher (transfer debits) were prepared by the CSE mentioning the debit to party account number and credit to '***Account as Doc'*** instead of crediting to Branch Commission account, credits have gone to his wife's account which amounts to financial loss to the Bank (16 transactions between January 2010 to April 2011 are listed) - two of the credit entries have been posted in the ID of the CSE - he is engaged in other pursuits either on his own account as the agent for another or others.

Thirdly, he has failed to check VVR properly - cross picked the transactions in the VVR Reports - there were no vouchers corresponding to such picked transactions – did not make any remark either in VVR Report or in missing voucher register to that effect (few of such transactions of 07.07.2010 deposited in the SB Account of 64043404951 are furnished) – there are no vouchers in the slip bundles.

Fourthly, he remitted 18 times cash to the Agriculture Gold Loan account of Sh. S Dharanesh / A/c 64069107187 – limit of Rs. 2,00,000/- - date of sanction 30.10.2010, all the 18 vouchers are prepared by him - a

sum of Rs. 20,000/- is transferred from his wife's account No. 64043404951 to the above Account of Sh. S. Dharanesh.

The above acts amount to gross misconduct in terms of Para 5(j) of the Memorandum of Settlement dated 10.04.2002.

7. The CSE gave reply charge wise stating that,

(i) During the period his OD limit was enhanced from 2 to 4 lakhs, he gave the details of the amounts mobilized by him.

(ii) At the instance of the previous Branch Manager, he has done the documentation work and reimbursed the cost, the transactions from his wife who received money from her well to do parents.

(iii) The transactions mentioned in the Charge Sheet are not reflected in the Hosadurga Branch VVR Report.

(iv) The account holder is a valued customer of the Branch and also his friend – at the request of the customer to remit the amount to his account, after receiving the cash from him, he has credited the amount, the Manager was aware of this.

8. During the enquiry, the CSE had the assistance of a Defence Representative; one witness was examined for the Management, 104 documents produced by the Management were marked as M-1 to M-10/5 so also the defence documents as D-1 to D-3.

9. The witness for the Management was the Branch Manager of Hosadurga Branch, the witness identified that CSE was the maker of many of the documents, more particularly vouchers Ex M-8/1 to Ex M-8/13.

During cross examination it emerged that the vouchers were passed by the then Branch Manager.

10. The defence examined one official witness of the Branch, who produced the instructions (D-1) given by the earlier Branch Manager to prepare loan documents and to collect documentation charges from the borrowers. She stated that the earlier Branch Manager had instructed the CSE to prepare loan documents.

He examined the account holder Sh. Dharanesh of A/c No. 64069107187 who ratified the cash remittances made by the CSE from his wife's account. He produced a letter /D-2 addressed by him to the Branch Manager dated 11.12.2012 in respect of the above transactions.

Another customer of the Branch was examined as DW-3 who stated that while sanctioning the loan the then Manager had told him about documentation charge.

The defence also produced a sale agreement pertaining to a site standing in his name Ex D-3. He gave statement that the transaction in his overdrafts is genuine and they are his personal transactions.

11. The Enquiry Officer in respect of the first charge observed that, LFC/PL encashment, Society short loan proceeds, should have been credited to the account by transfer entries. In the present case, except two transaction all are by cash – no documentary evidence is produced regarding his wife's income - hence, most of the transactions are disproportionate to his known source of his income.

Regarding second charge the Enquiry Officer found that, at A/c No. 64043404951 all the entries are debited to borrowers account and credited to 64043404951 instead of crediting to Branch Commission account, causing serious loss to the Bank. Sh. S M Hussain who had given the letter Ex D-1 is now charge sheeted - negligence involving the Bank in serious loss, any act/ work against the Circular instructions, system and procedures and Book of instructions of the Bank are not acceptable.

The defence with regard to third charge was accepted and was held as not established.

In respect of fourth charge the inference drawn by the Enquiry Officer was, Rs. 2,00,000/- was sanctioned to Sh. Dharanesh on 30.10.2010 – on the same day Rs. 2,00,000/- is credited to CSE's wife's Account No. 6404340495 - all the 18 remittances to be account are made by him and sum of Rs. 20,000/- is transferred from his wife's Account 6404340495 - thus, he had availed the loan to get concession rate of interest. Thus, the fourth charge was held to be proved.

12. The CSE submitted his reply to the Enquiry Report and participated in the personal hearing with his Defence Representative before the Disciplinary Authority and submitted his written submission to the show cause notice proposing the punishment of removal from service.

His Defence Representative while reiterating the defence, sought to consider his past good records, certificate of merit, Deposit mobilization and urged that never in service, CSE was called for explanation. The

Disciplinary Authority though reiterated the essence of defence charge vide Order dated 22.03.2013, in one stroke confirmed the proposed punishment i.e. **'REMOVAL FROM THE SERVICES OF THE BANK'** for gross misconduct in terms of Clause 6(b) of Bipartite Settlement and Disciplinary Action and procedure dated 10.04.2002. The Appeal preferred against the Order of the Disciplinary Authority met the same fate and the Punishment Order was not interfered.

13. Let us see whether the proved facts amount to misconduct as contemplated by Para 5(j) of the Memorandum of Settlement dated 10.04.2002 which reads thus:

> *"Doing any act prejudicial to the interest of the Bank or gross negligence or negligence involving or likely to involve the Bank in serious loss".*

Thus, it is clear that the Act complied of / proved should be either

a) Prejudicial to the interest of the Bank.

b) Gross negligence.

c) Negligence likely to involve serious / financial loss to the Bank.

14. Going by chronological order, the first charge of *'transaction in his current account disproportionate to his known source of income'* – though the source from which the CSE had credited to his account, was not doubted. Still reasoning of the Enquiry Officer for holding him vicariously liable for the misconduct, the LFC/PL encashment, Society short Loan Proceeds should have been credited to his account by transfer entries; in his case except two transaction all transactions are by cash; there was no evidence pertaining to the income of his wife.

There is no specific allegation that the transaction beyond his known source of income would amount to misconduct as per the service conditions applicable to him or any of the Banking regulations. It is not shown how the transactions harmed the interest of the Bank, either monetarily or in any other way. The finding recorded by the Enquiry Officer that transaction was disproportionate to his known source of income, even if, accepted for argument sake still, the story is incomplete for not having shown under what provisions of the Bipartite Settlement or Conditions governing the services of the Bank employee same amounts to a punishable misconduct and for not showing that said transaction was prejudicial to the interest of the Bank or gross misconduct or negligence leading to loss / financial loss to the Bank. The Enquiry Officer has failed to examine how the transactions not disputed by the 1st Party would fall under the misconduct contemplated by Para 5(j) of the Bipartite Settlement.

Likewise, with regard to the second charge – admittedly the transactions of credit, debit vouchers from the account of the loanees' towards Documentation charges and the said amount is credited to the account of the wife of the CSE. The then Manager vide Ex D-1 had ratified the transaction stating that there used to be inordinate delay for getting the documents through outsiders - he had impressed his staff members to undertake the job of documentation for the interest of the Bank and also for the better services of the customers which job, staff of Hosadurga performed; instead of making payments to outsiders, same payment is made to the staff members to meet the expenses towards preparing the documents, stationery items, printer, electricity charge, computer repairs etc – the staff have not demanded any payment as commission or documentation charge.

It is a matter to be noted that none of the loanees had complained to the Bank that the documentation charge imposed on them was excess. It is also not shown that the documentation expenses deducted was exorbitant, much above the expenses levied by outsiders, causing loss to the customers. It is nobody's case that the expenses so debited has caused loss or prejudice to the Bank, it is also a fact to be noted that the account holder of 6404340495 was called upon to reimburse the amounts credited towards documentation charge. Neither the 1st Party was called upon to make good the amount to the Bank. As noted with regard to the first charge, the allegation is incomplete not making a full circle of misconduct. The Enquiry Officer though records that for not crediting the amount debited from the borrowers account to the Branch Commission has caused serious loss to the Bank. But there is no calculation how much amount the Bank would incur towards the documentation expenses and how much profit they make by imposing documentation charge. Hence, impressed to hold that the allegation is incomplete and fail to bring home misconduct within the four corners of Para 5(j) of the Bipartite Settlement. It is said that the previous Branch Manager is charge sheeted for negligence involving the Bank in serious loss. Even that were to be so, the 1st Party if followed the instruction of his Superior Officer / the Bank Manager in good faith, the allegation of *'negligence involving the Bank in serious loss'* will get pale when it reaches the CSE who has blindly followed the instructions. Moreover, the amount is credited to the account of his wife who is an outsider and for any acts committed by her, the 1st Party workman cannot be faulted.

With regard to the fourth charge, the whole transaction is ratified by the customer; the Enquiry Officer held the charges proved by reading in between lines that Agricultural Gold loan of Rs. 2,00,000/- was sanctioned to Sh. Dharanesh on 30.10.2010 and on the same day said amount is credited to the account of the wife of the CSE No. 6404340495 – showing that CSE availed the loan to get the concession rate of interest.

But there was no direct evidence that it is the CSE who got the benefit of the loans transactions thereby made undue profit out of that. When the loanee himself had appeared in person before the Enquiry Officer to ratify all the transaction made on his behalf, the Presenting Officer gave up his cross examination. At the least there could have been a suggestion that the beneficiary of the Gold loan of Rs. 2,00,000/- is CSE. That being so, the inference drawn by the Enquiry Officer holding the 1st Party was the beneficiary of the gold loan is perverse.

15. The Enquiry Report though runs into several pages, much of the space is consumed by reiteration of arguments advanced and the finding lacks judicious application of mind. The transactions as reflected from the Management documents were all admitted documents; but the CSE had given a plausible explanation to those transactions. The finding recorded was solely on appreciation of the prosecution case, one sided.

The workman before the Disciplinary Authority had contended that he had maintained unblemished record and his work was appreciated with certificate of merits, and sough to consider extenuating and mitigating circumstances but the same failed to draw the attention of the Disciplinary Authority.

16. Before the Appellate Authority he referred the Judgment of the Apex Court which ruled that Management cannot charge an employee for the alleged acts not enumerated in the service conditions. But the Appellate Authority out rightly rejected his appeal without touching upon this point. Right from the stage of Enquiry Report upto the Orders passed by Appellate Authority; there was no judicious application of mind of the Authority as to how the facts alleged, amounts to misconduct under Para 5(j) of the Bipartite Settlement. Hence, the Punishment Order of removal imposed on him is not legal and not justified.

17. Before this Tribunal, he has given evidence that now he works as an Accountant in a shop for Rs. 4,500/- Rs. 5,000/- and sought reinstatement with all consequential benefits. Though, he is working in a private shop that cannot be equated with the service in the Nationalised Bank. It is a fit case to exercise the jurisdiction under Sec 11-A of 'the Act' to reinstate him with continuity of service and 40% of the back wages.

AWARD

The Petition filed by Sh. N. V. Arunkumar S/o Late V. N. Varadaraj against the 2nd Party "State Bank of Mysore" presently State Bank of India under Sec 2(A) of the Industrial Dispute Act is allowed.

The punishment of removal from service imposed by the 2nd Party against the 1st Party workman vide order dated 22.03.2013 is not legal.

The 2nd Party is directed to reinstate the workman to his original post with continuity of service and back wages at 40%.

The above Order shall be implemented within 60 days of publication of this Award.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 19th June, 2020)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 6 जुलाई, 2020

dk vk 516.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बंगलोर के पंचाट (संदर्भ संख्या 23/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.07.2020 को प्राप्त हुआ था ।

[सं. एल-12025/01/2020-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 6th July, 2020

S.O. 516.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 23/2015) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Bangalore as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 06.07.2020.

[No. L-12025/01/2020-IR (B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 15TH JUNE, 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

ID 23/2015

I Party

Sh. T. R. Gangadharaiah,
S/o Rangaswamaiah,
Thyagatur Village and Post,
Nitur Hobli,
Tumkur District - 572129.

II Party

1. The Chief Manager,
State Bank of India,
Liability Central Processing Centre,
Pragathi Mahalakshmi,
No. 62, 1st Main, 3rd Cross,
Yeshwanthapura,
Bangalore - 560022.

2. The Manager,
State Bank of India,
Rural Central Processing Center,
1st Floor, Mahalakshmi Arcade,
S.S Puram Main Road, Tumkur - 572102.

Appearance

Advocate for I Party : Mr. D. R. Vishwanatha Bhat

Advocate for II Party : Mr. Ramesh Upadhyaya

AWARD

1. The 1st Party has raised this individual dispute challenging the legality of the order of the 2nd Party in not providing him employment after the Branch (S.R.I.R C.P.C Branch, Tumkur) was closed on 20.01.2014.

He claims that, he was working as a Messenger in the above Branch, on closure of the Branch he requested the 2nd Party for a post at another Branch and the 2nd Party assured to provide a Messenger post at SME Branch, but so far said assurance is not complied. After repeated request by him, he is refused employment without proper notice or proper enquiry. The action of the 2nd Party amounts to retrenchment as per the Sec 2(oo) of the Industrial Dispute Act, 1947 (for brevity 'the Act' herein after), but without following mandatory provisions of Sec of 25-F, G and H of 'the Act'. He is deprived of the livelihood due to the illegal action of the 2nd Party.

2. 2nd Party while denying his claim has contended that he is not appointed in the service of the 2nd Party and there is no post of Attendant in the Bank as alleged. Hence, there is no question of removal or payment of compensation. He was engaged for cleaning the premises of the Branch as and when the exigencies of work so required, and is paid applicable daily wages. He is not entitled for any re-engagement.

3. In view of the stand taken by 2nd Party as above the onus shifted to the 1st Party to prove his allegations. But he has not discharge his onus by adducing evidence. 2nd Party has also not adduced evidence. In the circumstance it is inevitable to hold that the 1st Party failed to prove the Industrial Dispute brought to this Tribunal, hence his petition is liable to be rejected.

AWARD

The Petition filed by the 1st Party workman Sh. T. R. Gangadharaiah under Sec 10(4-A) of 'the Act' is rejected.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 15th June, 2020)

JUSTICE SMT. RATNAKALA, Presiding Office

नई दिल्ली, 6 जुलाई, 2020

dk vk 517.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बंगलोर के पंचाट (संदर्भ संख्या 12/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.07.2020 को प्राप्त हुआ था।

[सं. एल-12025/01/2020-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 6th July, 2020

S.O. 517.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 12/2012) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Bangalore as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 06.07.2020.

[No. L-12025/01/2020-IR (B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 16TH JUNE, 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

ID 12/2012

I Party	**II Party**
Sh. Chandra Prakash, S/o Late. Krishna Murthy Acharya, R/a "Chinmayee", Korangrapady Post, UDUPI (T) and (D) – 574 118.	The General Manager, State Bank of India, (Operations), Head Office, Kempe Gowda Road, BANGALORE – 560 001.

Appearance

Advocate for I Party : Smt. Geetha Krishna

Advocate for II Party : Mr. Ramesh Upadhyaya

AWARD

1. This petition is filed by the former employee of the 2nd Party erstwhile 'State Bank of Mysore' presently 'State Bank of India'.

The Claim of the 1st Party workman is, he was working as a Head Cashier at Channarayapatna Branch of 2nd Party; on account of his illness he applied for leave from 26.12.2006 to 26.09.2008; after his recovery, he reported to duty on 07.07.2008 but he was not allowed to report; the 2nd Party removed him from service w.e.f. 31.08.2008 without conducting any enquiry; the Dismissal Order is illegal; it is not a case of voluntarily abandoning the service. Aggrieved by the Impugned Order, he filed appeal but his appeal came to be dismissed. Hence, prayer is for an award of reinstatement to the original post with continuity of service and back wages.

2. The claim is contested.

It is contended that, the 1st Party remained unauthorizedly absent from 26.12.2006 to 21.10.2008 and did not heed to the repeated Orders of the Competent Authority to resume the duty; the Competent Authority treated that he voluntarily abandoned and in accordance with the due procedure and per the rules binding on him vide Order dated 31.12.2008. It is a belated claim. There is no employer - employee relationship between the parties. He was continuously absent from 26.12.2006 till 21.10.2008 i.e., the date of voluntary cessation of the Bank's employment; he was absent from the Bank since 29.07.2006 and worked for three days in November 2006 and only for three days in December 2006; he had written to the Bank vide letter dated 18.06.2007 for extension of his leave upto 20.07.2007; no leave was sanctioned to him to consider any, for further extension; no medical certificate was submitted by him to the Bank; Bank issued notice dated 31.01.2008 and also notice dated 29.02.2008 which is acknowledged by him. The Bank sent him last and final notice dated 29.03.2008 to his last known address and same was undelivered and returned back. The paper notification was also published.

Further it is contended for the 2nd Party that, he had sent a letter dated 26.03.2008 subsequent to the memo CP/1/2007-08 dated 31.01.2008 which was sent by the Bank. In his letter dated 26.03.2008 he stated that, he was advised by the Doctor to take rest and needs extension of leave. He was not sanctioned any leave in the first place to ask for any further extension. Said letter was not accompanied with medical certificate and he did not report to duty with medical certificate as per the letter dated 26.03.2008. After he was treated as voluntarily retired from the service of the 2nd Party Bank on 26.03.2008, he wrote a letter dated 07.07.2008 enclosing undated Medical Certificate. The veracity of the Medical Certificate is doubtful. He falsely claims that, he reported to duty on 07.07.2008; he was absent for nearly two years and his Medical Certificate was not acceptable. He was issued letter dated 07.07.2008 to produce the medical fitness certificate by the District Surgeon at the earliest to enable the Bank to consider his request to report to duty which he has not done. His letter dated 27.09.2008 is written subsequent to paper notification stating that his name is cut off from Bank's rolls. He has remained absent from duty intentionally and deliberately. If an employee remain absent for a period than granted and reports for duty within 30 days from the date of expiry of sanctioned leave without certificate for the extended period of sanctioned leave such absence will be treated as unauthorised absence for which the Management may at it's discretion hold Enquiry.

In the present case, he is not interested in the job and the Management need not hold an Enquiry. The Bank has passed Order under clause 33 of Memorandum of Settlement dated 02.06.2005 treating that he voluntarily retired form service of the Bank, vide Order of the General Manager (operations) dated 31.12.2008. The order is legal and justified.

3. On completion of pleading, both parties adduced evidence reiterating respective claim / counter claim.

4. During the cross examination, the 1st Party workman / WW-1 admits that he applied for leave on evening of 24.12.2006 and he is not aware whether the leave is sanctioned or not – he attended the work in November 2006 only for three days and December for three days – he has received the notices dated 30.01.2008 and 29.02.2008 – he does not have a copy of medical fitness certificate which he alleges to have taken with him to the Bank in July 2008 to report for duty. He has produced Receipt dated 18.06.2007 of the Post Office and the copy of his letter dated 18.06.2007, Medical Certificate, letter dated 27.09.2008 addressed to the GM of the 2nd Party along with courier receipts they are marked as Ex W-1 to Ex W-11.

The Management documents were brought on record through their HR Manager / MW-1. The Staff Circulars No. 17/2005-06 and 93/2008-2009 (EX R-1 and Ex R-9), call notices dated 31.01.2008, 29.02.2008 and 29.03.2008 issued by the Branch Manager (Ex R-2 to Ex R-4). The Paper notifications in the different Newspapers are Ex R-5 to Ex R-7 dated 26.09.2008 and 27.09.2008.

5. Placing both sets of documents in juxtaposition to each other emits that, the 1st Party workman was issued three call notices vide Ex R-2 dated 31.01.2008, Ex R-3 dated 29.02.2008 and Ex R-4 dated 29.03.2008 with a warning, that if he failed to report to duty, he would be deemed to have voluntarily retired form service on the expiry of the notice. The workman in his custody has a Photostat copy of the application dated 18.06.2007 (Ex W-2) and the Medical Certificates dated 05.05.2006 and for the subsequent period. Going by these documents, he was suffering from respiratory infection and bronchitis, and advised rest from 01.05.2006 to 05.05.2006. Ex W-4 to Ex W-8 are the medical fitness certificates for the subsequent periods. Vide Ex R-4 the final call notice dated 29.03.2008 called upon him to report to duty within 30 days of the date of the notice. He admits that he had received the earlier call notices Ex R-2 and Ex R-3 dated 31.01.2008 and 29.02.2008 respectively. There was no question during the cross examination that, he is served with the call notice Ex R-4 dated 29.03.2008. However, Ex R-4 is also said to have been sent to the very same address as that of Ex R-2 and Ex R-3. In the Paper publication, they have stated that he was sent notice through register post to his address on 31.01.2008 and 29.02.2008 and 29.03.2008, but he remained absent from 29.07.2006 continuously

for more than 30 days; he did not report within the time stipulated in the above notices. Now, the employee is notified that since he did not report within 30 days stipulated in the notice, he is treated as abandoning his employment voluntarily and his name is removed from the Bank's Rolls as per Para 33 of 8th Bipartite Settlement. The representation of the workman dated 27.09.2008 (Ex R-8) is received by the Bank on 30.09.2008. He had stated in the said letter that he had sent a request for sanction of the leave vide his letter dated 18.06.2007 (Ex W-2) stating that, the current Medical Certificate will be produced while reporting for duty; he has sent medical certificates of 01.05.2006, 05.05.2006, 08.05.2006, 26.05.2006, 31.05.2006, 23.06.2006, 03.07.2006, 26.07.2006, 31.07.2006, 25.11.2006, 04.12.2006, 22.12.2006. But his representation and the Medical Certificates referred therein are not in compliance of the call notices Ex R-2, Ex R-3 and Ex R-4.

6. In his affidavit evidence he has not denied service of the call notices Ex R-2 to Ex R-4 on him.

Ex R-1 / the Staff Circular 17/2005-06 at Para 33 contemplates voluntary Cessation of employment thus,

(i) *"When an employee absents himself from work for a period of 90 or more consecutive days without prior sanction from the Competent Authority or beyond the period of leave sanctioned originally including any extension thereof or when there is satisfactory evidence that he has taken up employment in India or outside, the management at any time thereafter may give a notice to the employee at his last known address as recorded with the Bank calling upon him to report for work within 30 days of the date of notice.*

Unless the employee reports for work within 30 days of the notice or gives an explanation for his absence within the period of 30 days satisfying the management inter alia that he has not taken up another employment or avocation, the employee shall be given a further notice to report for work within 30 days of the notice failing which the employee will be deemed to have voluntarily vacated his employment on the expiry of the said notice and advised accordingly by registered post.

In the event of the employee submitting a satisfactory reply, he shall be permitted to report for work thereafter within 30 days from the date of expiry of the aforesaid notice without prejudice to the bank's right to take any action under the law or rules / conditions of service.

If the employee fails to report for work within this 30 days period, then he shall be given a final notice to report for work within 3 days of this notice failing which the employee will be deemed to have voluntarily vacated his employment on the expiry of the said notice and advised accordingly by registered post.

(ii) *If an employee again absents himself for the second time within a period of 30 days without submitting any application and obtaining sanction thereof, after reporting for duty in response to the first notice given after 90 days' of absence or within the 30 days' period granted to him for reporting to work on his submitting a satisfactory reply to the first notice, a further notice shall be given after 30 days of such absence giving him 30 days' time to report. If he fails to report for work or reports for work in response to the notice but absents himself a third time from work within a period of 30 days without prior sanction, his name shall be struck off from the rolls of the establishment after 30 days of such absence under intimation on him by registered post deeming that he has voluntarily vacated his appointment.*

(iii) *Any notice under this clause shall be in a language understood by the employee concerned. The notice shall be sent to him by registered post with acknowledgement due. Where the notice under this clause is sent to the employee by registered post acknowledgement due at the last recorded address communicated in writing by the employee and acknowledged by the Bank, the same shall be deemed as good and proper service."*

7. The final order of "**Voluntary Cessation of Service of Employment"** is passed on 31.12.2008 under Clause 33 of Memorandum of Settlement dated 02.06.2005 vide office Staff Circular 17/05-06 dated 14.06.2005.

For convenience, let us read Para 33 of the Settlement of 02.06.2005,

"When an employee absents himself from work for a period of 90 or more consecutive days without prior sanction from the Competent Authority or beyond the period of leave sanctioned originally including any extension thereof or when there is satisfactory evidence that he has taken up

employment in India or outside, the management at any time thereafter may give a notice to the employee at his last known address as recorded with the Bank calling upon him to report for work within 30 days of the date of notice. Unless the employee reports for work within 30 days of the notice or gives an explanation for his absence within the period of 30 days satisfying the management inter alia that he has not taken up another employment or avocation, the employee shall be given a further notice to report for work within 30 days of the notice failing which the employee will be deemed to have voluntarily vacated his employment on the expiry of the said notice and advised accordingly by registered post. In the event of the employee submitting a satisfactory reply, he shall be permitted to report for work thereafter within 30 days from the date of expiry of the aforesaid notice without prejudice to the bank's right to take any action under the law or rules/ conditions of service. If the employee fails to report for work within this 30 days period, then he shall be given a final notice to report for work within 30 days of this notice failing which the employee will be deemed to have voluntarily vacated his employment on the expiry of the said notice and advised accordingly by registered post.

(ii) If an employee again absents himself for the second time within a period of 30 days without submitting any application and obtaining sanction thereof, after reporting for duty in response to the first notice given after 90 days' of absence or within the 30 days' period granted to him for reporting to work on his submitting a satisfactory reply to the first notice, a further notice shall be given after 30 days of such absence giving him 30 days' time to report. If he fails to report for work or reports for work in response to the notice but absents himself a third time from work within a period of 30 days without prior sanction, his name shall be struck off from the rolls of the establishment after 30 days of such absence under intimation to him by registered post deeming that he has voluntarily vacated his appointment.

(iii) Any notice under this clause shall be in a language understood by the employee concerned. The notice shall be sent to him by registered post with acknowledgement due. Where the notice under this clause is sent to the employee by registered post acknowledgement due at the last recorded address communicated in writing by the employee and acknowledged by the bank, the same shall be deemed as good and proper service."

8. In the case on hand there is no proof about service of the 3rd notice Ex R-4 dated 29.03.2008. Still, I am inclined to hold that there was deemed service of all the three notices on the 1st Party workman since at no point of time, the workman contended that, he was not served third notice / Ex R-4. Even before this Court, he has not placed any worth believing material to show that he was prevented from reporting to duty within the time stipulated in Ex R-2 to Ex R-4. That drives me to hold the workman since voluntarily abandoned his service continuously for more than 90 days and failed to report within 30 days of notice of 29.03.2006, the Disciplinary Authority was well within it's propriety to treat him as voluntarily vacated his employment w.e.f. 21.10.2008. I do not find any material to presume that he made attempt to report to duty within the period stipulated in the call notices EX R-2 to Ex R-4 with credible explanation for remaining absent continuously. His prayer for reinstatement etc is without merit.

AWARD

The Petition filed by the 1st Party workman Sh. Chandra Prakash under Sec 2-A of the I.D Act is dismissed.

(Dictated to o/s LDC, transcribed by her, corrected and signed by me on 16th June, 2020)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 6 जुलाई, 2020

dk vk 518.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बंगलोर के पंचाट (संदर्भ संख्या 01/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.07.2020 को प्राप्त हुआ था ।

[सं. एल-12025/01/2020-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 6th July, 2020

S.O. 518.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 01/2016) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Bangalore as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 06.07.2020.

[No. L-12025/01/2020-IR (B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 16TH JUNE, 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

ID 01/2016

I Party	**II Party**
Sh. E Manoharan, S/o Late Ethiraj, No. 3422, Sait Compound, Bangarpet - 563114.	The General Manager (P), State Bank of India, Head Office (IR), Kempegowda Road, Bangalore - 560009.

Appearance

Advocate for I Party : Mr. Muralidhara

Advocate for II Party : Mr. Ramesh Upadhyaya

AWARD

1. The petition is filed under Sec 2-A of the Industrial Dispute Act, 1947 (for brevity 'the Act') by the former employee of the erstwhile 'State Bank of Mysore' presently 'State Bank of India'. He is aggrieved by the order of the 2nd Party whereby his name is struck off from the Rolls of the establishment by deeming that he has voluntarily vacated the employment.

The workman claims that while working as a Clerk at KGF Branch, because of serious health issue he was under medical care and rest from 04.07.2012 to 20.04.2013 and could not attend the duty; he was not in a position to reach out to the Administration and submit application for leave on medical ground. He could not receive two communications addressed to him by the Bank; on receipt of the order dated 22.03.2013 intimating him that his name is struck off from the rolls of the Bank by deeming it voluntary abandonment of job, he enclosed necessary Medical Certificates issued by the Government Hospital, KGF/ Kolar, but there was no response from the 2nd Party; he appealed to the Deputy General Manager, his appeal was rejected stating that there was no provision in the Bipartite Settlement for appeal against voluntary cessation of employment. The 2nd Party has not followed the procedure to be followed for invoking Clause 33 of VIII Bipartite Settlement, the notices of 31.10.2012 and 31.01.2013 are not served on him; the Bank has not made effort to issue further notice or issue paper publication; the action of the 2nd Party is contrary to the principles of natural justice, he has no past records. 2nd Party has invoked voluntary cessation clause though it had option to consider as an act of Misconduct. In similar case of absenteeism, the Bank has taken lenient view, and he is not gainfully employed and deprived of his livelihood.

2. The claim is contested by 2nd Party as below: the service conditions of Award Staff i.e. workmen including 1st Party are governed by the provisions of Bipartite Settlements and various Awards. As per VIII Bipartite Settlement, *when an employee absents himself from work for a period of 90 days or more consecutive days without prior sanction from the competent Authority or beyond the period of leave sanctioned originally, including any extension therefore, the management at any time thereafter may give a notice period of 30 days and a further notice of 30 days calling for explanation, falling which the employee will be deemed to have voluntarily vacated his employment on the expiry of the said notice.*

The 1st Party remained unauthorisedly absent w.e.f 11.07.2012 and did not heed to the repeated orders of the Competent Authority of the 2nd Party to resume the duty; after following the due procedure Competent Authority has treated that he has voluntarily abandoned his service and was relieved from the service of the

Bank. It is a belated claim; no leave was sanctioned to him in the first place to consider any for further extension. He was issued notice dated 31.10.2012 which is received and acknowledged. The second notice dated 31.01.2013 was sent to his last known address and he neither reported to duty nor sent any communication for staying away from duty. He has not made any sincere attempt to report to duty as per the instruction of the Competent Authority. The Bank is justified in passing the order dated 22.03.2013 under Clause 33 of Memorandum of Settlement dated 02.06.2005 treating him as Voluntary Retired from service of the 2nd Party.

3. The documents produced by either side are marked by consent of the opposite party as Ex M-1 to Ex M-5 and Ex W-1 to Ex W-8.

By looking into the nature of the dispute recording of evidence is dispensed.

4. It is clear from the documentary evidence that the first notice was given to him vide Ex M-1 dated 31.10.2012 and the same is served on him as per the acknowledgment Ex M-2. Since, he had not responded second show cause notice dated 31.01.2013 vide Ex M-3 was issued calling upon him to report within 30 days of the notice, but there is no documentary proof about service of Ex M-3 on him. However, deeming that the notice is served on him and he failed to report to work the final order dated 22.03.2013 is passed vide Ex M-4.

5. It is the further story from the side of the workman that, after receiving the final order of 22.03.2013 he made representation vide Ex W-2 dated 29.04.2013 acknowledging the receipt of the call notices Ex M-1 and Ex M-3, he advanced the grant of his ill health for his absence and for not responding to the notices; he requested to reconsider the order and provide him an opportunity to work. His representation was accompanied with the Medical Certificates that he was absent from duty w.e.f 11.07.2012 to 20.04.2013 due to his ailment and fit to report w.e.f. 21.04.2013. Acting on his representation the Assistant General Manager addressed a letter to the Branch Manager vide Ex W-3 dated 23.10.2013 calling for certain clarification about his health, fitness to attend the duty, his past performance and his assurance to attend the duty in future in case of reinstatement. The Branch Manager has sent a favourable report vide Ex W-4 dated 11.11.2013 and recommended for his reinstatement. The undertaking letter given by the 1st Party was also annexed to Ex W-4, The Deputy General Manager considered the matter for review of the order of Voluntary Cessation of employment, however the DGM (HR) vide Ex W-6 states that DGM (Law) opined that '*...it is not possible to consider the appeal or review of the employee since no such provisions exists.*

Reinstatement strongly recommended by AGM is possible

a) By a settlement either private between Bank, Union and Employee concerned or before the Conciliation proceedings initiated under the Industrial Dispute Act.

b) By an order of Central Government Industrial Tribunal ... ...'

6. In respect of the appeal preferred by him as per Ex W-7 dated 20.07.2015, the 2nd Party Bank replied vide Ex W-8 dated 17.08.2015 that, "*no provision are available to appeal against the said order as your name is struck off from the rolls of the Bank. Hence, we are not in a position to consider your representation favourably.*"

7. Heard both parties

8. Clause VI of 4th Bipartite Settlement is produced by the 2nd Party to impress upon the Tribunal that they have followed the procedure while striking off the name of the workman from their rolls which reads thus :

Where an employee has not submitted any application for leave and absents himself from work for a period of 90 or more consecutive days without or beyond any leave to his credit or absents himself for 90 or more consecutive days beyond the period of leave originally sanctioned or subsequently extended or where there is satisfactory evidence that he has taken up employment in India or the management is satisfied that he has no present intention of joining duties the management may at any time thereafter give a notice to the employee's last known address calling upon the employee to report for duty within 30 days of the notice, stating inter alia, the grounds for the management coming to the conclusion that the employee has no intention of joining duties and furnishing necessary evidence where available. Unless the employee reports for duty within 30 days or unless he gives an explanation for his absence satisfying the management that he has not taken up another employment or a vacation and that he has no intention of not joining duties, the employee will be deemed to have voluntarily retired from the bank's service on the expiry of the said notice. In the event of the employee submitting a satisfactory reply, he shall be permitted to report for duty thereafter within 30 days from the date of the expiry of the aforesaid notice without prejudice to the bank's right to take any action under the law or rules of service.

In case of an employee who has gone abroad, and has not submitted any application for leave and absents himself for a period of 150 or more consecutive days without or beyond any leave to his credit or absents himself for 150 or more consecutive days beyond the period of leave originally sanctioned or subsequently extended and where the management has reasons to believe that he has no intention of joining duties, the management may at any time thereafter give a notice to the employee's last known address calling upon the employee to report for duty within 30 days of the notice, unless the employee reports for duty within 30 days or unless he gives an explanation for his absence satisfying the management, the employee will be deemed to have voluntarily retired from the bank's service on the expiry of the said notice. In the event of the employee submitting a satisfactory reply, he shall be permitted to report for duty thereafter within 30 days from the date of the expiry of the aforesaid notice without prejudice to the bank's right to take any action under the law or rules of service.

9. Since it is not the case of the 2nd Party that they doubted the 1st Party workman of moving abroad, only first Para is relevant for our purpose. It is not the case of the 2nd Party that he had taken up employment elsewhere; the notice issued to him vide Ex M-1 and Ex M-3 did not allege so. As per his own document Ex W-2 he acknowledges the receipt of both Ex M-1 and Ex M-3, though before this Tribunal he tried to give a twist to his case that he is not in receipt of these notices.

Be that as it may, his representation vide Ex W-2 dated 29.04.2013 submitted along with Medical Certificate covering the period of his absence impressed the Authorities to consider his case favourably. Because of the technical reason they are constrained to undo the final order passed vide Ex W-1 / Ex M-4 dated 22.03.2013. On a perusal of Ex M-5 / the provision of Clause XVI in suppression of Clause 2 of the 4th Bipartite Settlement under which the final order is passed, the first Para never contemplates striking off the name of the workman from the rolls of the establishment for his continuous absence or for not reporting to duty within the time stipulated in the two call notices. What is contemplated in such situation is "*...the employee will be deemed to have voluntary retired from the Bank's service on the expiry of the said notice....*"

10. In the event of Voluntary Retirement an employee will be entitled for all his terminal benefits. But in the case on hand a liability is imposed on the employee to pay the Bank his one month pay and allowance in lieu of his notice. It is the submission at the Bar that he has lost 10 years of service in lieu of the order dated 22.03.203 and he is not given the benefit of monthly pension.

11. 2nd Party in their counter statement had contented to the effect that, *diluting discipline and condoning indiscipline would only destroy motivation. Loyalty to work and disciple among the employees of the 2nd Party are two important factors for the existence of the 2nd Party Bank. Any misguided sympathy is no more than a maudlin sentiment that may prove fatal for the existence of the 2nd Party Bank.* But the above pleading is contrary to the response shown by the Disciplinary Authority and Appellate Authority to his representation vide Ex W-2. The Disciplinary Authority / AGM called for clarification from the Branch Manager about the health, performance and assurance to work in future and the Branch Manager reciprocated with a favourable report, still for the technical reasons they could not undo the order of 22.03.2013 by themselves.

12. On two counts the claim is liable to be upheld. Firstly, because his name is removed from the Muster Rolls without terminal benefits though such removal is not contemplated by the 4th Bipartite Settlement Ex M-5. When he had approached the 2nd Party with Medical Records and had assigned his bonafide reasons for remaining absent, the 2nd Party was not averse to consider his representation favourably for reinstatement.

13. In that view of the matter I hold it is a fit case to exercise the jurisdiction vested with this Tribunal by Sec 11-A of 'the Act'. However, for having not rendered service w.e.f 11.07.2012, he is not entitled for back wages except continuity of service.

AWARD

The Petition filed by Sh. E Manoharan, 1st Party under Sec 2-A of 'the Act' is allowed.

The orders of the Disciplinary Authority dated 22.03.2013 in striking off his name from the Rolls of the Bank vide Ex W-1 /Ex M-4 is set aside.

The 2nd Party is directed to reinstate the workman to his original post with continuity of service and without back wages within 60 days of publication of the Award.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 16th June, 2020)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 6 जुलाई, 2020

dk- vk- 519.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बंगलोर के पंचाट (संदर्भ संख्या 09/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.07.2020 को प्राप्त हुआ था ।

[सं. एल-12012/56/2010-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 6th July, 2020

S.O. 519.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 09/2011) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Bangalore as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 06.07.2020.

[No. L-12012/56/2010-IR (B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 15TH JUNE, 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 09/2011

I Party	**II Party**
Sh. C Prasad, S/o Late Chandrashekharaiah, Shankarpura, 1st Cross, Near Rama Mandira, Chamarajanagara District - 571313	The General Manager (P), State Bank of India, Administrative Office, Old SBM Building, IR Section, K.G. Road, Bangalore – 560009.

Appearance

Advocate for I Party : Smt. Geetha Krishna

Advocate for II Party : Mr. N. Venkatesh

AWARD

The Central Government vide Order No. L-12012/56/2010-IR(B-I) dated 01.04.2011 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

> **"Whether the action of the management of State Bank of Mysore, Region V, Zonal office, Mysore, Karnataka in awarding the punishment of compulsory retirement from service with superannuation benefits on Sh. C Prasad, Ex-Daftary, State Bank of Mysore, Chamarajanagar Branch, Mysore vide their order dated 29.03.2008, is legal and justified? To what relief the workman is entitled?"**

1. The 1st Party workman is the former employee of the erstwhile 'State Bank of Mysore' presently 'State Bank of India', who was imposed punishment of Compulsory Retirement with superannuation benefits after the charges came to be proved against him in a Departmental Enquiry.

2. In his claim statement he has contended that a Criminal Case was pending against him on the similar charges without waiting for the final verdict the 2nd Party proceeded with the Domestic Enquiry against the law laid down by the Apex Court. He alleges that there was lack of opportunity during the enquiry to defend himself against the charges which resulted in perverse enquiry report; the Disciplinary Authority without

marshalling the evidence placed on record has inflicted the major penalty of compulsory retirement from service; the Appellate Authority rejected his appeal mechanically and in total non-application of mind.

3. The claim is contested by the 2nd Party and while denying the allegations of the 1st Party, the action taken against him is sought to be justified.

4. On the rival pleadings touching the fairness of the Domestic Enquiry a Preliminary Issue was raised, tried and adjudicated vide order dated 03.02.2015, thereby holding that Domestic Enquiry conducted against the 1st Party is fair and proper.

5. The 1st Party thereafter was allowed to lead evidence in respect of the subject matter of the enquiry (though not permissible perhaps by inadvertence further evidence is received). He has produced six documents which he could not produce during the Domestic Enquiry; there was no spell in his affidavit evidence in respect of his unemployment.

However, 2nd Party examined one witness to counter the further evidence adduced by the 1st Party workman. At this stage itself I deem it fit to remind the parties that the proceedings before this Tribunal is not in the nature of original trial or appeal. There is no scope within the perimeter of 'the Act' for a Labour Court / Tribunal to exercise Appellate or original jurisdiction over the punishment order. The position of law is, if the Domestic Enquiry which culminated into punishment order is found not legal / justified, and the 2nd Party offers to prove the misconduct against the workman afresh, then comes the question of receiving the evidence in support of the charge sheet. If the validity of Domestic Enquiry is upheld the scope of further enquiry will be only on the question of discrimination - victimization - unemployment of the 1st Party workman. Any legal contentions like insufficiency of evidence, perversity of enquiry report, harshness or disproportionality of the punishment imposed, do not require any evidence, the principles laid down by the Higher Courts are binding and cannot be escaped. With this observation we will proceed to examine the Enquiry Report.

6. Arguments oral / written are submitted by both parties along with authorities.

The judgment of the Criminal Court acquitting the 1st Party workman from similar charges is also borne in the record.

7. The allegations against the workman in the Charge Sheet dated 01.02.2007 was, Firstly, he stole 3 demand drafts (as detailed in the charge sheet) given for collection on 11.09.2006 at Chamarajanagar Branch, the payee was Sh. M P Doreswamy and the cheques were drawn on Corporation Bank, Mysore they were for Rs. 40,000/-, Rs. 2,000/- and Rs. 1,000/- respectively; he encashed the demand drafts through M/s. Jamuna Stores, Chamarajnagar by identifying the signatures of Sh. M P Doreswamy.

Secondly, though he had encashed the cheque before 22.09.2006, he unauthorizedly entered non-existing demand drafts in the 'Sent for Collection Register' on 27.09.2006 thereby made the Branch to believe that the drafts have been sent for collection to the Service Branch, Mysore of the 2nd Party.

8. During the Domestic Enquiry, management examined three witnesses and seven documents were marked. There was no defence evidence; however the 1st Party submitted his summing up report.

The first witness for the management who had worked as Branch Manager of Chamarajanagar Branch between 21.07.2004 to 02.06.2007 during whose tenure the alleged misconduct had occurred. He produced the Attendance Register / Ex-1 revealing that CSE was on duty as on 27.09.2006; Ex-2 was the SC Register Serial No. 1260 dated 27.09.2006, the document bears the Numbers of 3 DDs as detailed in the charge sheet. The witness stated that the DDs were lodged on 27.09.2006 and sent for collection to the Service Branch, Mysore. At Ex-2 they have mentioned the date as 28.11.2006 and the witness explained that the customer Sh. M. P. Doreswamy is the employee of the Superintendent of the Police Office, brought pressure from his top officials to credit the amount immediately, since it is a reward given by Director General of Police in Veerappan Case. Hence the witness purchased the DDs after confirming that these DDs are dispatched to the Service Branch of the 2nd Party at Mysore for collection from Corporation Bank, Mysore. The customer had made available Xerox copy of all the above 3 DDs. The witness further stated that realisation advise from service branch Mysore was not received; on enquiry over phone with the service Branch, Mysore he learnt that they have not received the DDs at all for realisation. Further he learnt from Corporation Bank, Mysore that the DDs were paid as below:

DD No. 468763 for Rs. 40,000/- paid on 15.09.2006

DD No. 469879 for Rs. 2,000/- paid on 29.09.2006

DD No. 470793 for Rs. 1,000/- paid on 29.09.2006

On further enquiry and probe he came to know that Bharatiya Sahakari Bank Niyamitha, Chamarajanagar Branch collected said DDs on behalf of its Customer M/s Jamuna Stores, Chamarajanagar; Ex-3 to Ex-5 are the copies of the DDs duly certified by Manager, SBM, Chamarajanagar Branch. Witness stated that these DDs were sent by BSBN Bank to HDFC Bank, Mysore for presentation to Corporation Bank for payment.

9. The second witness was the Deputy Manager, Accounts of the 2nd Party Bank. His statement was he had kept the DDs with the challan in a clip for sending later at the day for collection but could not. When the customer enquired about the realisation he searched in the SC Register and could not find the DDs lodged; he was told by the CSE that DDs were sent to some branch by mistake and have returned back; since the party was hurrying for realisation, he had sent it to Service Branch for collection, later when the customer insisted for payment, next day DDs were purchased and credited to his account after deducting the charges. Since they could not get the realisation for a very long time, on contacting Service Branch Mysore, they were informed that instruments were not received; the CSE had prepared Ex-2.

The third witness was the Chief Executive Officer, Bharathiya Sahakari Bank Niyamitha, Chamarajanagar. Two letters authored by Sh. C. V. Jayaram the then CEO of the said Bank were marked as Ex-6 and Ex-7. There was no cross examination to this witness.

The 1st Party cross examined BW-1 and BW-2 at length. He gave his oral statement pleading innocence.

10. Vide Ex-7 the BSBN had stated that the instruments in question were not specially crossed therefore they could not make out its genuineness. Mr. R Krishna Murthy, Proprietor of M/s Jamuna Stores, Thyagaraja Road, Chamarajanagar / Endorsee of the said instruments presented for collection and the proceeds were realised on 15.09.2006, 06.10.2006 and 06.10.2006 respectively. It was mentioned in the said report "*we are in order in collecting the proceeds for the account of endorsee in good faith and without negligence*". The bank had forwarded the letter of Sh. R Krishna Murthy addressed to the CEO of the Bank wherein he had stated that the CSE had collected the cash in respect of the DDs by representing that his Manager had sent those DDs, since cash is required to be cleared immediately to the beneficiary. The CSE had identified the signature of the beneficiary borne on the backside of the DD.

11. Following points were brought forth by the defence in the cross examination of BWs and his summing up report.

1. There was no direct evidence that CSE had stolen the instruments.
2. BW-1 was not sure about the hand writing on BEX-1.
3. The endorsement of M/s Jamuna Stores were not available on the back of the DDs.
4. The signature of the beneficiary and the identifier differs.
5. The contention of the Management that an amount of Rs. 43,000/- was remitted by Sh. Krishna Murthy proprietor, Chamarajanagar on 04.01.2007, is not proved.
6. BW-2 had officiated in the office copy of the schedule there was no evidence as to whether the CSE traced the lost instruments which was erroneously sent to the wrong branch.
7. The Authors of Ex-6 and Ex-7 were not examined.

12. In his Report, the Enquiry Officer has drawn inference in favour of the prosecution from the circumstantial evidence,

a) that CSE had taken unusual interest in Personally taking the SC schedule office copy without instruments for initial by BW-2, and in intimating the Manager / Deputy Manager about availability of the DD when they started searching. He lied and misled the Supervisory Staff about missing instruments and has written 're-post' on the SC Collection Schedule, though DDs were already paid on 22.09.2006 itself when the search of the instruments were made at the Branch on 29.09.2006.

b) The BSBN Chamarajanagar had collected the DDs to the credit of their Customer Sh. Krishna Murthy, M/s. Jamuna Stores.

c) The DDs funds are refunded to the credit of the account of Sh. Doreswamy by unknown person without disclosing his identity.

d) As per the Attendance Register Ex-1, CSE proceeded on unauthorised leave from 16.12.2006 without marking his departure time.

13. Admittedly, the DDs were received at the Branch from Sh. Doreswamy for collection on 12.09.2006, neither of the witnesses BW-1 and BW-2 have seen them thereafter. They have searched for the instrument only after Sh. Doreswamy approached the Bank 15 days thereafter, demanding the cash proceeds of DDs. There is evidence in the SC Register that all the cheques were lodged on 27.09.2006 and sent for collection to the Service Branch, Mysore. Parallelly the DDs were encashed on 15.09.2006 and 29.09.2006 from the Corporation Bank, Mysore, in favour of HDFC Bank, Mysore on behalf of BSBN Bank, Chamarajanagar. The Photostat copies of the 3 DDs on the backside bear the signature of Sh. Doreswamy witnessed by CSE. However, BW-1 has stated both signatures do not tally with the original signatures of the CSE and Sh. M P Doreswamy. As per the SC Register, the DDs were sent for collection on 27.09.2006. As per the SC Register DDs were *'re-posted'* on 19.10.2006. The said word *'re-post'* is identified to be in the handwriting of the CSE by BW-2. Both BW-1 and BW-2 have stated that CSE disclosed that DDs had returned and he reposted the same by narration in the SC Register 're-post'. The Manager / BW-1 made effort to get non-payment advise to purchase Duplicate DDs. Surprisingly, there was no cross examination to both witnesses disputing that *'by re-post'* is not in the handwriting of the CSE, though it was suggested that the handwriting differs, but both witnesses denied the suggestion.

The amount is recovered after re-purchasing the instruments on 28.09.2006, thinking that original DD must have been lost in transit. The cheques presented by BSBN on behalf of their customer Sh. R Krishna Murthy is not endorsed by said Sh. R Krishna Murthy. The evidence brought on record established only one fact that while the Bank was making effort to encash and pay the proceeds of DDs to Doreswamy, the BSNB Bank collected the amount through HDFC on behalf of their customer Sh. Krishna Murthy. Subsequently, the amount in respect of the 3 DDs is credited to the account of Sh. Doreswamy.

14. Of course, there are missing links between the circumstances. No direct evidence is there on record that those 3 DDs were handed over to Krishna Murthy by the CSE for encashment. But as per the letter Ex-7 forwarded by the BSBN Bank to the Branch, those DDs were sent for encashment by the Manager through the CSE, accordingly he got the DDs encashed and paid the amount; the CSE had identified the signature of the beneficiary on the backside of the DD. It is also a point to be noted that on 16.12.2006 the CSE signed in the Attendance Register at 10.15 am and has left the Branch without recording the time. Though CSE gave his defence statement, he did not dispute re-posting on 19.10.2006 of the DDs, or did not assign reason for not signing while leaving. Of course, it is the look out of the Management to prove the charge against the CSE. But here is the case were the Management rested its case by demonstrating that the CSE falsely represented that the DDs were sent for realisation to a wrong Branch, returned and are reposted on 19.10.2006. The onus shifted to the CSE to dispute his handwriting in the SC Collection Register about reposting the DDs and to categorically deny the statements of BW-1 and BW-2 which he did not do. His defence statement was not categorical to refute the case of the prosecution, he only stated'

> *'...I do not have anything more to add other than to say I am innocent and I have been made a scapegoat under circumstantial evidence. I have not indulged in any of the activities...*

15. A Charge Sheeted Employee in a Departmental Enquiry does not stand on the same pedestal as that of an accused person in a Criminal trial. The jurisprudence governing criminal adjudication is entirely different from that of departmental enquiry. From the admitted facts and also the circumstantial evidence the prosecution had placed material to rope in the CSE, but the CSE during the cross examination of the witnesses could not shatter the statements of the management witnesses nor build up a plausible defence. The DDs are encashed and the amount is credited to the account of the beneficiary Sh. Doreswamy by an anonymous person. It is hard to believe that the Bank Officials are unaware of the identity of the person who made good the loss. But neither of the parties stated in clear terms the identity of the person who credited the said amount to the Account of Sh. Doreswamy.

16. The Disciplinary Authority in the body of its punishment order has reasoned that *"....having lost confidence on CSE to continue his services, decided to inflict the punishment of COMPULSORY RETIREMENT....."*

17. Of course, the misconduct alleged is of temporary misappropriation. Even if it is a matter of temporary misappropriation that tells upon his integrity and honesty and it is always dangerous to allow employees whose conduct is suspicious to continue him in service of the establishment that too when it is a Bank which handles Public money and is catering the public needs.

18. The 1st Party workman has produced the certified copy of the judgment passed by the Criminal Court whereby he is acquitted from the charges of offences punishable under Sec 381 and 414 r/w Sec 34 of IPC. The Criminal Court observed that the documentary and oral evidence are insufficient to prove the guilt of the accused.

19. The Apex Court in its judgment in Civil Appeal No. 7279 of 2019 (Arising out of SLP (C) No. 25909 of 2013) DD 16.09.2019 Karnataka Power Transmission Corporation Limited Vs Sri C. Nagaraju & Anr., observed that "*...the Disciplinary Authority is not bound by the judgment of the Criminal Court if the evidence that is produced in the Departmental Inquiry is different from that produced during the criminal trial. The object of a Departmental Inquiry is to find out whether the delinquent is guilty of misconduct under the conduct rules for the purpose of determining whether he should be continued in service.*"

20. In view of the discussion supra the claim of the 1st Party workman lacks merits not calling for relief in exercise of jurisdiction vested by Sec 11-A of 'the Act'.

AWARD

The Reference is rejected.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 15th June, 2020)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 6 जुलाई, 2020

d k vk 520.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बंगलोर के पंचाट (संदर्भ संख्या 34/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.07.2020 को प्राप्त हुआ था ।

[सं. एल-12012/246/2005-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 6th July, 2020

S.O. 520.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 34/2006) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Bangalore as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 06.07.2020.

[No. L-12012/246/2005-IR (B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 24TH JUNE, 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 34/2006

I Party

Sh. Noor Mohamed,
S/o Kasimsab Mamdapur,
Resident of Yogapur,
Bijapur Karnataka,
Bijapur - 586104.

II Party

1. The General Manager (Operation), State Bank of India,
Head Office,
Gunfoundry,
Hyderabd - 500001.

2. The Branch Manager,
State Bank of India,
Bijapur, Karnataka,
Bijapur - 586104.

Appearance

Advocate for I Party : Mr. N.S. Narasimha Swamy

Advocate for II Party : Mr. S.K.M. Shetty

AWARD

The Central Government vide Order No. L-12012/246/2005-IR(B-I) dated 21.07.2006 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether the action of State Bank of Hyderabad Bijapur in terminating the services of Sh. Noor Mohammed although he had worked for more than 240 days service during the calendar year 1999, 2002 and in regularizing and absorbing his juniors viz name S/Shri Devadas N. Kulkarni, Prakash Bilagi and Noor Attar casual worker ignoring and overlooking the seniority of Sh. Noor Mohamed is justified? If not, to what relief he is entitled to?"

1. The 1st Party workman former employee of erstwhile 'State Bank of Hyderabad' presently 'State Bank India' claims that,

he was working as a Sweeper in the 2nd Party on daily wages in December 1999; he worked continuously till he was illegally refused employment w.e.f. 30.08.2004; during his tenure, he was paid salary. As per the practice prevailing in the 2nd Party Bank, the workmen employed like him are invariably absorbed and regularised in Class IV cadre; juniors whose names are mentioned in the points of dispute are regularised in service ignoring him. The action of the 2nd Party in terminating him from service without following the due procedure prescribed under law is unjust, arbitrary and illegal.

2. The claim is contested by the 2nd Party Bank denying entire set of facts averred in the Claim Statement. It is contended that, the 1st Party was not issued appointment letter nor he was appointed in any permanent post; he has not worked continuously nor he was engaged continuously. The 2nd Party being a Public Sector Bank has well established rules and systems to recruit it's employees / workman. As per the policy of Government of India, Banks cannot engage any workman on temporary basis; they may at Branch level engage casual labourer for a day's work on payment for the day; whenever, permanent workman is on leave or absent; whenever, vacancies arises Bank invites applications through Employment Exchange and also through Newspaper advertisement, display on notice Board; the candidates are selected through interview by selection committee especially for the purpose; except this system there is no other system for appointment of subordinate cadre in the Bank. Having not been appointed, there is no question of his illegal termination. Mere working on daily wages does not vest any right for absorption or regularisation with him. The Law in this regard is well settled.

In their additional Counter Statement, the 2nd Party further averred that, Sh. Devads N Kulakarni, Sh. Prakash Bilagi and Sh. Noor Attar were recruited in the Bank after their names were sponsored by Employment Exchange and after facing the interview before the committee formed by the Bank for recruiting the Sub-Staff.

3. Both parties have adduced respective evidence to reiterate their case.

4. The 1st Party during cross examination identified Photostat copy of the Petty Cash Challan Form under which he had drawn amount Rs. 50/- towards his wages, in respect of his work on 15th and 16th of February, 2000. The document since was produced by him was marked as Ex W-1.

Rebuttal evidence was adduced by the Branch Manager of Bijapur Branch, who has categorically denied the claim that the 1st Party was taken in the employment of the Bank and served continuously till the date of refusal of employment.

During the cross examination, he admits that between 1999 to 2004 Sh. Devadas N. Kulakarni, Sh. Prakash Bilagi and Sh. Noor Attar were working in the Branch - now, they are permanent employees.

5. The evidence placed by the witnesses is nothing but in the nature of oath against oath. When the very appointment of the 1st Party to any job in the 2nd Party was denied, some tangible evidence was required to uphold his contention that, he was working continuously as a casual labourer upto 30.08.2004. The Photostat copy of Petty Cash Claim Form produced by him even if were to be genuine will not vest any right in him to seek regularisation of his service. Naming some persons who were earlier working as casuals, later were appointed to the permanent post of Sub-Staff, will not take his case anywhere, because the Bank is governed by the recruitment rules as per the guidelines of the Government of India and also in terms of the 5th Bipartite Settlement entered between the Indian Bank Association and Bank employees Union. If the persons named in the schedule to the Order of reference were qualified and satisfied the eligibility criteria, and fared well in the interview, the 1st Party cannot encash on their appointments.

Except Ex W-1, he has no proof to demonstrate that he has served continuously between December 1999 to 30.08.2004; hence, his service does not amount to continuous service as enshrined by Sec 25-B of 'the

Act'. The 2nd Party cannot engage labourers / workmen on temporary basis. Assuming that he was engaged for few days during their need by the 2nd Party, his disengagement does not amount Retrenchment contemplated by the Sec 2(oo) of 'the Act'. Hence, there was no obligation on the 2nd Party to comply with the procedure contemplated by Sec 25-F of 'the Act' which is required to be followed while retrenching the workman. The Claim is misconceived.

AWARD

The reference is rejected.

(Dictated to o/s LDC, transcribed by her, corrected and signed by me on 24th June, 2020)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 6 जुलाई, 2020

dk vk 521.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलोर के पंचाट (संदर्भ संख्या 21/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.07.2020 को प्राप्त हुआ था ।

[सं. एल-12012/31/2012-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 6th July, 2020

S.O. 521.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 21/2012) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Bangalore as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 06.07.2020.

[No. L-12012/31/2012-IR (B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 19TH JUNE, 2020

PRESENT: JUSTICE SMT. RATNAKALA, Presiding Officer

CR 21/2012

I Party	**II Party**
Sh. M. Manjunath, S/o Late Mariyappa, C/o Sri Arun Kunar, Advocate, Hole Beedi, Belur-560022, HASSAN District.	The Chairman & Mg. Director, State Bank of India, Head Office, K.G. Road, BANGALORE – 560009.

Appearance

Advocate for I Party : Mr. Muralidhara

Advocate for II Party : Mr. Ramesh Upadhyaya

AWARD

The Central Government vide Order No. L-12012/31/2012-IR(B-I) dated 19.07.2012 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether the action of the management of State Bank of Mysore in imposing the punishment of 'dismissal without notice' upon Sh. M. Manjunath w.e.f. 25.10.2005, is legal and justified? To what relief the Sh. M. Manjunath is entitled?"

1. The 1st Party workman former employee of erstwhile 'State Bank of Mysore' presently 'State Bank India' is challenging the punishment of '*dismissal without notice*' imposed on him, on certain misconduct having been proved against him in a Departmental Enquiry. At the time of his dismissal he was working as a Cashier-Godown Keeper at Chikkaballapur Branch. He has joined the service of the 2nd Party as Peon (sub-staff) on 10.12.1987, subsequently, promoted as Daftary and then as Cashier-Godown. He was issued Charge Sheet dated 12.01.2004 on certain allegations, followed by Domestic Enquiry. The Enquiry Officer after holding the enquiry submitted his findings that Charge I, III and IV are established against the workman. He submitted his objection to the enquiry findings and requested the Disciplinary Authority not to accept the findings. However, the Disciplinary Authority proceeded to impose the Punishment Order. The criminal prosecution initiated on same set of allegation has ended in his acquittal.

2. The 1st Party claims that, he was not given reasonable opportunity in the enquiry and did not hold the enquiry impartiality and the finding is perverse. The Disciplinary Authority even before he could reply for the 2nd Show cause notice and attend the personal hearing imposed the Punishment Order and it is not a reasoned Order and is without lack of application of mind. He is victimised for his Trade Union activities; his appeal is not considered so far; ever since his dismissal he is unemployed. The punishment imposed is excessive and far disproportionate to the gravity of misconduct.

3. The claim is contested by the 2nd Party. The grievance vented out by the 1st Party against the procedure of enquiry, report of the Enquiry Officer, the Punishment Order and his allegation of victimisation, are all denied and the action is sought to be justified.

4. On the basis of the rival issues touching the fairness of Domestic Enquiry, a Preliminary issue was raised, tried and adjudicated by answering the issue in negative. It was held that CSE / the 1st Party was not given fair opportunity to defend himself during the enquiry.

5. Though opportunity was given to the 2nd Party to adduce evidence in support of the charges against the workman, they have not utilised the same.

6. The workman led evidence that, because of his trade Union activities, he is victimised and he is without employment.

7. He is not due for superannuation, in the immediate future and will be eligible to continue in service if reinstated.

8. In the given circumstance, it is inevitable to hold that the action of the 2nd Party Management in imposing the punishment of '*dismissal without notice*' upon Sh. M. Manjunath w.e.f. 25.10.2005 is not legal and not justified. The workman is entitled for reinstatement with continuity of service and back wages at 60%.

AWARD

The reference is accepted.

The action of the 2nd Party Management in imposing the punishment of dismissal without notice to Sh. M. Manjunath w.e.f 25.10.2005, is not legal and not justified.

The 2nd Party is directed to reinstate the workman with continuity of service with back wages at 60% within 60 days from the date of publication of Award, otherwise the arrears due to the workman shall carry interest at 6% per annum.

(Dictated to o/s LDC, transcribed by her, corrected and signed by me on 19th June, 2020)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 6 जुलाई, 2020

d k- v k- 522.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बंगलोर के पंचाट (संदर्भ संख्या 144/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.07.2020 को प्राप्त हुआ था ।

[सं. एल-12012/126/2007-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 6th July, 2020

S.O. 522.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 144/2007) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Bangalore as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 06.07.2020.

[No. L-12012/126/2007-IR (B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 23RD JUNE, 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 144/2007

I Party	**II Party**
Sh. Palakshy, S/o Sh. Basappa Chiradoni, 10th Cross, 3rd Main Road, Vinobhanagar, DAVANGERE – 577006.	The Deputy General Manager, State Bank of India, Zonal Office, HUBLI.

Appearance

Advocate for I Party : Mr. M. Rama Rao

Advocate for II Party : Mr. Ramesh Upadhyaya

AWARD

The Central Government vide Order No. L-12012/126/2007-IR(B-I) dated 10.10.2007 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

> **"Whether the punishment of discharge from service imposed on Sh. Palakshy by the management of State Bank of Mysore, is legal and justified, If not, to what relief the workman concerned is entitled?"**

1. The 1st Party workman the former employee of the erstwhile 'State Bank of Mysore' presently 'State Bank of India' has raised the dispute against the Punishment Order of '*discharge from service*' imposed on him by his Employer / 2nd Party as a measure of punishment, since the charges against him, came to be proved in a Departmental Enquiry. He had joined the service of the 2nd Party as Typist / Clerk on 14.08.1987 and subsequently promoted as Special Assistant on 04.05.1995 and was working at Kerebilichi Branch of the 2nd Party.

2. The workman alleges that, the Departmental Enquiry was held after an inordinate delay of more than three years. Enquiry was conducted in violation of principles of natural justice; enquiry finding is perverse, the Disciplinary Authority failed to take cognizance of the relevant fact and over looked his excellent past records;

his co-employee Mr. Govindayya who was also charged for same misconduct is exonerated. The Punishment Order is too harsh and severe; he is unemployed and is without any source of income.

3. The claim is contested and all the allegations levelled in the Claim Statements are denied, while seeking for justification of the action taken against the workman.

4. On the rival pleadings touching the fairness and the correctness of the Domestic Enquiry, a Preliminary Issue was framed, tried and adjudicated as follows,

> *"keeping open the consideration of the merit of the Enquiry Report, for the present, I answer the Preliminary Issue in the affirmative holding that the Domestic Enquiry was held in a proper manner against the workman."*

5. The 1st Party workman has adduced evidence about his unemployment and also allegation of victimisation.

6. It is fact that, the 2nd Party failed to produce original Enquiry Records while adjudicating the Preliminary Issue, however, was permitted to lead secondary evidence by producing the Photostat copies vide Order dated 17.09.2014. Accordingly, the Photostat copies of the Enquiry record were marked as EX M-1 to Ex M-9 during the examination chief of the Management witness.

During the cross examination of witness the veracity of these Photostat copies was very much disputed. However, while adjudicating the Preliminary Issue, the documents Ex M-1 to Ex M-9 (Photostat Copies) are accepted as the true copies of the proceedings. The 1st Party workman not only opted not to adduce rebuttal evidence during the Domestic Enquiry but also while leading evidence before this Tribunal in respect of his unemployment and allegation of victimisation etc., did not state disputing the geniuses of the documents Ex M-1 to Ex M-9. In that view of the matter, now we will consider whether the Enquiry Officer has returned his finding entirely on the basis of the evidence adduced before him.

7. To summarise the allegation as made out in the Charge Sheet of 04.06.1999 against the workman,

Firstly, while working as Special Assistant at Kerebilichi Branch, on 13.04.1999, he fraudulently prepared a withdrawal Form for Rs. 20,000/- on non-existing Savings Bank Account NO. P1/1207 of Sh. B. Basavaraj and withdrew the money; he himself had passed the withdrawal form - the withdrawal was not debited to any SB account – the amount was entered in the SB Day Book – cum – Progressive Balance Register of Ledger No. P1 – he remitted a sum of Rs. 20,000/- on 28.04.1999 for credit of non-existing SB A/c No. P1/1207 of Sh. B. Basavaraj.

Secondly, to cover up the above fraudulent act, he removed the relative withdrawal form of 13.04.1999 for Rs. 20,000/- from the slips of the day.

Thirdly, on 15.04.1999, he fraudulently prepared a withdrawal form for Rs. 20,000/- of the above stated Bank A/c No. P1/1207 – passed the withdrawal form – entered the transaction in the SB Day Book – cum – Progressive Balance Register of Ledger No. P1 without any account number – remitted a sum of Rs. 20,000/- on 23.04.1999 for credit of the non-existing SB A/c No. P1/1207.

Fourthly, he removed the relative withdrawal form of Rs. 20,000/- of 15.04.1999 from the slips of that day.

Vide amended Charge Sheet dated 08.09.1999, the A/c No. 259 was added in respect of first charge in the place where it was mentioned *"without any account number"*. Likewise, in respect of third transaction of 15.04.1999 account No. 1534 was scored off by introducing the word *"without any account."*

8. During the enquiry, sole witness examined for the prosecution was the then Branch Manager of Kerebilichi Branch and through him 13 documents were marked in evidence. The problem here is to appreciate the Report of the Enquiry Officer; this Tribunal is obliged to verify the documents marked during the enquiry. Unfortunately, those documents, at the least Certified Copy of those documents marked as Bex-1 to Bex-13 are not placed on record. It is impermissible to record a finding on the Enquiry Report on the basis of the Statement

given by the witness before the Enquiry Officer, in the absence of the documents marked / copies of the documents marked.

9. In the view of the above peculiar circumstances, this Tribunal is not in a position to endorse the finding of the Enquiry Officer. The original of the Punishment Order passed by the Disciplinary Authority and the Order passed by the Appellate Authority are also not produced, only photostat copies of both Orders are produced. Since, I am not able to endorse the correctness of the Enquiry Report, the Orders of the Disciplinary Authority and the Appellate Authority whereby, Enquiry Report is accepted and acted upon cannot be upheld as legal.

That further takes on into its fold that, punishment of *"discharge from service with superannuation benefits imposed on Sh. Palakshy by the Management of State Bank of Mysore"* is not legal and not justified.

10. Now comes the question of the appropriate relief that may be awarded to the 1st Party workman. He has already crossed the age of superannuation and there is no question of reinstatement into service. In view of the Punishment Order imposed on him, he lost his valuable service in the 2nd Party. He has testified before this Tribunal that he is not employed anywhere. In the given circumstance, the years of service lost by him as a result of the Punishment Order shall be compensated by awarding 75% of the back wages.

AWARD

The reference is accepted.

The punishment of discharge from service imposed on Sh. Palakshy by the Management of erstwhile State Bank of Mysore presently State Bank of India is not legal.

The 2nd Party is directed to treat the workman as on continuous duty without break from the date of his discharge from service i.e., 19.04.2003 to the date of his superannuation and pay him 75% of the back wages for the said period within 60 days of publication of the Award, lest, the amount shall carry simple interest at 6% per annum.

(Dictated to o/s LDC, transcribed by her, corrected and signed by me on 23rd June, 2020)

JUSTICE SMT. RATNAKALA, Presiding Officer

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